Supreme Court of the United States

OCTOBER TERM, 1969

No. 1517

EUGENE GRIFFIN, ETC., ET AL.,
Petitioners,

—v.—

LAVON BRECKENRIDGE, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Docket No. 1417

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN

v.

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE

Basis of Action: CIVIL RIGHTS, 28 U.S.C. Secs. 1331 and 1343—Assault and Battery Suit for $640,000.00

Jury Trial Claimed by Defendants on 9-18-67

For Plaintiff:

MARION WRIGHT, 538½ No. Farish St., Jackson, Miss. 39202

L. LACKEY ROWE, JR., DENNISON RAY, JONATHAN SHAPIRO, ELLIOTT C. LICHTMAN, 233 No. Farish St., Jackson, Miss. 39201

For Defendant:

HELEN J. McDADE, DeKalb, Miss., Box 112 39328

DOCKET ENTRIES

Date	Plaintiff's Account	Received	Disbursed
6-30-67	Marion Wright	15.00	
7- 6-67	C/d 1-4		15.00
1-17-68	Dennison Ray No. 50723 Notice of Appeal	5.00	

DOCKET ENTRIES

Date	
	J.S. 5 card
6-30-67	Complaint, original and three copies, filed
6-30-67	Summons issued; original and two copies, copies having attached thereto copy of complaint, mailed to U. S. Marshal
7-11-67	Summons returned executed as to both defendants, filed.
7-24-67	Defendants' Motion to Enlarge Time to Plead, with certificate of service—filed.
7-25-67	Copies of Rule for Requesting Jury Trial mailed to Marion Wright and Helen J. McDade
7-28-67	ORDER granting defendants until Sept. 18, 1967 in which to file their pleadings in this cause, filed and entered. O.B. 1967, Vol. II, page 389.
7-28-67	Copy of above Order mailed to Marion Wright and L. Lackey Rowe, Jr.
9-18-67	Answer of Defendants James Calvin Breckenridge and Lavon Breckenridge with certificate of service —filed.
9-18-67	Defendants' Motion to Dismiss, having attached thereto copy of Complaint filed in the Circuit Court of Kemper County, Miss., No. 1738, with certificate of service, and notice of hearing at Meridian, Miss. on the first Monday of the first session of court hereafter held at Meridian, Miss., by Honorable Dan M. Russell, Jr., filed.
9-18-67	Defendants' Motion to Dismiss with certificate of service and notice of motion at Meridian, Miss. on the first Monday of the first session of court hereafter held at Meridian, Miss. by Honorable Dan M. Russell, Jr., filed.

Date	
12- 4-67	OPINION OF THE COURT holding that the motion to dismiss for failure to state a cause of action is sustained. An order may be prepared accordingly, filed.
12- 4-67	Copies of above opinion mailed by Judge Russell to Mrs. Helen J. McDade and Mr. Dennison Ray.
12- 5-67	Motion of Marion E. Wright to Withdraw Appearance as Counsel of Record, having attached affidavits of Lonnie Chamberlin, by Mary Chamberlin, Willie Mae Johnson, Ted Coleman, Roosevelt Griffin, filed.
12- 5-67	Notice of Hearing of Motion to Withdraw Appearance as Counsel of Record at Meridian, Miss. at 9:00 A.M. on December 13, 1967, filed.
12-18-67	ORDER sustaining motion of the defendants to dismiss for failure to state a claim and dismissing cause with prejudice, with costs taxed against the plaintiffs, filed and entered. O.B. 1967, Vol. II, page 541. (Copies mailed to L. Lackey Rowe and Dennison Ray)
	J.S. 6 card
1-17-68	Notice of Appeal by Plaintiffs from order of the Court entered December 18, 1967, to United States Court of Appeals, with certificate of service, filed.
1-17-68	Bond for Costs on Appeal, filed. Check of Lawyer's Committee for Civil Right Under Law in amount of $250.00 mailed to Clerk, Jackson, Miss. for deposit into Registry.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

COMPLAINT—Filed June 30, 1967

1. The first cause of action arises under the Civil Rights Act of 1964, U.S.C., Title 42, Section 1985 as hereinafter more fully appears. The remaining causes of action are ancillary to the first cause of action. Each matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. The jurisdiction of this Court is invoked pursuant to U.S.C., Title 28, Sections 1331 and 1343.

2. The plaintiffs are Negro citizens of the United States and residents of Kemper County, Mississippi. Eugene Griffin, Renea Johnson, and Lonnie Chamberlin are minors and their respective parents sue on behalf of said minors and in their own right. Ted Coleman is an adult.

3. The defendants, Lavon Breckenridge and James Calvin Breckenridge, are white adult citizens of the United States residing in DeKalb, Kemper County, Mississippi.

4. On July 2, 1966, the minor plaintiffs and Ted Coleman were passengers in an automobile belonging to and operated by R. G. Grady of Memphis, Tennessee. They

were travelling upon the federal, state and local highways in and about DeKalb, Mississippi, performing various errands and visiting friends.

5. On July 2, 1966 defendants, acting under a mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes, wilfully and maliciously conspired, planned, and agreed to block the passage of said plaintiffs in said automobile upon the public highways, to stop and detain them and to assault, beat and injure them with deadly weapons. Their purpose was to prevent said plaintiffs and other Negro-Americans, through such force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi, including but not limited to their rights to freedom of speech, movement, association and assembly; their right to petition their government for redress of their grievances; their rights to be secure in their persons and their homes; and their rights not to be enslaved nor deprived of life and liberty other than by due process of law.

6. Pursuant to their conspiracy, defendants drove their truck into the path of Grady's automobile and blocked its passage over the public road. Both defendants then forced Grady and said plaintiffs to get out of Grady's automobile and prevented said plaintiffs from escaping while defendant James Calvin Breckenridge clubbed Grady with a blackjack, pipe or other kind of club by pointing firearms at said plaintiffs and uttering threats to kill and injure them if defendants' orders were not obeyed, thereby terrorizing them to the utmost degree and depriving them of their liberty.

7. Pursuant to their conspiracy, defendants wilfully, intentionally, and maliciously menaced and assaulted each of the said plaintiffs by pointing firearms and wielding deadly blackjacks, pipes or other kind of clubs, while uttering threats to kill and injure said plaintiffs, causing them to become stricken with fear of immediate injury and death and to suffer extreme terror, mental anguish and emotional and physical distress.

8. Pursuant to defendants' conspiracy, defendant James Calvin Breckenridge then wilfully, intentionally

and maliciously clubbed each of said plaintiffs on and about the head, severely injuring all of them, while both defendants continued to assault said plaintiffs and prevent their escape by pointing their firearms at them.

9. As a direct result of the clubbing and beating and the injuries resulting therefrom, each of said plaintiffs was terrorized and suffered extreme fear for the safety and well-being of himself and his family, anxiety, depression, humiliation and other mental anguish and emotional distress, some of which continues until the present time and will continue for an indefinite period in the future.

10. Defendants wilfully and maliciously intended to inflict, and by their conspiracy and acts pursuant thereto, did inflict upon plaintiff parents mental suffering, terror, fright and fear for the safety and well-being of the minor plaintiffs, the rest of their families and themselves, which continues until the present time and will continue in the future.

FIRST CAUSE OF ACTION

11. Paragraphs 1 through 10, inclusive, of this Complaint are incorporated herein by reference.

12. By their conspiracy and acts pursuant thereto, the defendants have wilfully and maliciously, directly and indirectly, intimidated and prevented the minor plaintiffs and their parents, plaintiff Ted Coleman and other Negro-Americans from enjoying and exercising their rights, privileges and immunities as citizens of the United States and the State of Mississippi, including but not limited to, their rights to freedom of speech, movement, association and assembly; the right to petition their government for redress of grievances; their right to be secure in their person; their right not to be enslaved nor deprived of life, liberty or property other than by due process of law, and their rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi, for which plaintiffs seek damages pursuant to the Civil Rights Act of 1964, Section 1985 of Title 42 of the United States Code.

WHEREFORE, each plaintiff demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $10,000 and punitive damages in the amount of $15,000.

SECOND CAUSE OF ACTION

13. Paragraphs 2 through 6, inclusive, of this Complaint are incorporated herein by reference.

14. By reason of defendants' malicious and false imprisonment and detention of said plaintiffs upon the public highway, each of them suffered extreme terror, mental anguish and severe emotional distress.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

THIRD CAUSE OF ACTION

15. Paragraphs 2 through 7, inclusive, of this Complaint are incorporated herein by reference.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $10,000 and punitive damages in the amount of $20,000.

FOURTH CAUSE OF ACTION

16. Paragraphs 2 through 9, inclusive, of this Complaint are incorporated herein by reference.

17. As a direct result of the clubbing and beating of said plaintiffs, each of them sustained a severe concussion and injuries to the brain, head, and adjacent parts of his body, severe lacerations, contusions and abrasions of the scalp resulting in permanent scars, and various residual physical effects from these injuries. These injuries were accompanied by great pain and suffering which some of said plaintiffs still suffer, with some diminution, at the present time and which they will continue to suffer for an indefinite period in the future.

18. As a direct result of his injuries Ted Coleman, plaintiff, has incurred and will incur in the future, various medical expenses and losses of earnings and earning power.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $25,000 and punitive damages in the amount of $50,000.

FIFTH CAUSE OF ACTION

19. Paragraphs 2 through 17, inclusive, of this Complaint are incorporated herein by reference.

20. As a direct result of injuries and ailments suffered by the minor plaintiffs caused by the acts of the defendants pursuant to their conspiracy, the plaintiff parents of the minor plaintiffs have incurred and will incur in the future various medical expenses and other expenses for the care and treatment of their said minor children.

21. As a direct result of the injuries, ailments and disability suffered by the minor plaintiffs, the plaintiff parents have lost the services and the earnings of their minor children and some will sustain such losses in the future.

WHEREFORE, each of said plaintiff parents demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

/s/ Marian Wright
538½ North Farish Street
Jackson, Mississippi

L. Lackey Rowe, Jr.
Denison Ray
Jonathan Shapiro
Elliott C. Lichtman
233 North Farish Street
Jackson, Mississippi

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

ANSWER OF DEFENDANTS—Filed September 18, 1967

Now come James Calvin Breckenridge and Lavon Breckenridge, Defendants in the above styled and numbered cause and file this their answer to the Complaint filed against them herein, and answer so much and such parts as they are advised and believe it is necessary to make answer, and answering, say as follows, to-wit:

1. They deny the first cause of action arises under the Civil Rights Act of 1964, U.S.C., Title 42, Section 1985; and they deny that the remaining causes of action are ancillary to the first cause of action.

2. They deny that each matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

3. They deny the jurisdiction of this court is invoked pursuant to U.S.C., Title 28, Sections 1331 and 1343.

4. They admit that the plaintiffs, Eugene Griffin, Renea Johnson, Lonnie Chamberlin, and Ted Coleman, are Negro citizens of the United States and residents of

Kemper County, Mississippi; and that plaintiffs, Eugene Griffin, Renea Johnson, and Lonnie Chamberlain are minors and their respective parents sue on behalf of said minors and in their own right; and they admit Ted Coleman is an adult.

5. Defendants admit that they are white adult citizens of the United States residing in DeKalb, Kemper County, Mississippi.

6. They deny on July 2, 1966, the minor plaintiffs and Ted Coleman were traveling as passengers in an automobile belonging to and operated by R. G. Grady of Memphis, Tennesse[illegible] on the federal, state and local highways in and about DeKalb, Mississippi, performing various errands and visiting friends.

7. They deny on July 2, 1966, that they, acting under the mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes, wilfully and maliciously conspired, planned, and agreed to block the passage of said plaintiffs in said automobile upon the public highways, to stop and detain them and to assault, beat and injure them with deadly weapons. Defendants deny their purpose was to prevent the plaintiffs and other Negro-Americans, through force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi, including but not limited to their rights to freedom of speech, movement, association and assembly; their right to petition their government for redress of their grievances; their rights to be secure in their persons and their homes; and their rights not to be enslaved nor deprived of life and liberty other than by due process of law; and Defendants state the truth to be that the only violence committed by either of the Defendants was in self-defense and justifiable.

8. Defendants deny that pursuant to their conspiracy, they drove their truck into the path of Grady's automobile and blocked its passage over the public road. Defendants deny that they forced Grady and the plaintiffs to get out of Grady's automobile and prevented said plaintiffs from escaping while Defendant James Calvin

Breckenridge clubbed Grady with a blackjack, pipe, or other kind of club by pointing firearms at said plaintiffs and uttering threats to kill and injure them if defendants' orders were not obeyed, thereby terrorizing them to the utmost degree and depriving them of their liberty.

9. Defendants deny that pursuant to their conspiracy, Defendants wilfully, intentionally, and maliciously menaced and assaulted each of the said plaintiffs by pointing firearms and wielding deadly blackjacks, pipes or other kind of clubs, while uttering threats to kill and injure said plaintiffs, causing them to become stricken with fear of immediate injury and death and to suffer extreme terror, mental anguish and emotional and physical distress; and Defendants again state the truth to be that the only violence committed by either of the Defendants was in self-defense and justifiable.

10. Defendants deny that pursuant to Defendants' conspiracy, Defendant, James Calvin Breckenridge then wilfully, intentionally and maliciously clubbed each of said plaintiffs on and about the head, severely injuring all of them, while both Defendants continued to assault said plaintiffs and prevent their escape by pointing their firearms at them.

11. Defendants deny that as a direct result of the clubbing and beating and the injuries resulting therefrom, each of said plaintiffs was terriorized and suffered extreme fear for the safety and well-being of himself and his family, anxiety, depression, humiliation and other mental anguish and emotional distress, some of which continues unto the present time and will continue for an indefinite period in the future.

12. Defendants deny that they wilfully and maliciously intended to inflict, and by their conspiracy and acts pursuant thereto, did inflict upon plaintiff parents mental suffering, terror, fright and fear for the safety and well-being of the minor plaintiffs, the rest of their families and themselves, which continues until the present time and will continue in the future.

13. Defendants deny that by their conspiracy and acts pursuant thereto, that they have wilfully and maliciously, directly and indirectly, intimidated and prevented the

minor plaintiffs and their parents, plaintiff Ted Coleman and other Negro-Americans from enjoying and exercising their rights, privileges and immunities as citizens of the United States and the State of Mississippi, including but not limited to, their rights to freedom of speech, movement, association and assembly; the right to petition their government for redress of grievances; their right to be secure in their person; their right not to be enslaved nor deprived of life, liberty or property other than by due process of law, and their rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi, for which plaintiffs seek damages pursuant to the Civil Rights Act of 1964, Section 1985 of Title 42 of the United States Code; and Defendants state the truth to be that neither of the Defendants is an officer of law, neither was acting under the color as law officers, and neither of the Defendants committed any conspiracy or any acts pursuant thereto.

14. They deny the allegations in Paragraphs 13 and 14 for a second cause of action.

15. They deny the allegations in Paragraph 15 for a third cause of action.

16. They deny as a direct result of the clubbing and beating of said plaintiffs, that each of them sustained a severe concussion and injuries to the brain, head, and adjacent parts of his body, severe lacerations, contusions and abrasions of the scalp resulting in permanent scars, and various residual physical effects from these injuries, and Defendants deny these injuries were accompanied by great paid and suffering which some of said plaintiffs still suffer, with some diminution, at the present time and which they will continue to suffer for an indefinite period in the future. Defendants have no personal knowledge of any paid and suffering which the plaintiffs may have been caused to endure and deny that the plaintiffs, by reason of Defendants' act and conduct, will continue to suffer for an indefinite period in the future.

17. Defendants deny as a result of his injuries, Ted Coleman, plaintiff, has incurred and will incur in the

future, various medical expenses and loss of earnings and earning power.

18. Defendants deny the allegations in Paragraphs 16, 17, and 18 for a fourth cause of action.

19. Defendants deny as a direct result of injuries and ailments suffered by the minor plaintiffs caused by the acts of the defendants pursuant to their conspiracy, the plaintiff parents of the minor plaintiffs have incurred and will incur in the future various medical expenses and other expenses for the care and treatment of their said minor children.

20. Defendants deny that as a result of the injuries, ailments and disability suffered by the minor plaintiffs, the plaintiff parents have lost the services and the earnings of their minor children and some will sustain such losses in the future.

21. Defendants deny the allegations in Paragraphs 19, 20, and 21 for a fifth cause of action.

22. Defendants deny that the plaintiffs, or either of them, should recover any amount whatsoever from the Defendants, or either of them; on either or any of the alleged causes of action herein; and the Defendants respectively request a jury to try this cause.

/s/ W. D. Moore
and

/s/ Helen J. McDade
Attorneys for Defendants

Defendants Request Trial by Jury.

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

MOTION TO DISMISS—Filed September 18, 1967

Come now the Defendants in the above styled and numbered cause by and through their attorneys of record and moves the court to dismiss this cause of action for the following reasons, to-wit:

That the Plaintiffs in this cause have heretofore filed their cause of action in the Circuit Court of Kemper County, Mississippi, which said cause of action involves the same identical parties as is involved in this cause, and involves the same identical allegations of complaint as is involved in this cause, and plaintiffs sue for the same damages for the same alleged acts, and that the said Circuit Court of Kemper County, Mississippi, has taken jurisdiction of said cause, and that the same is now pending in said Court; that this cause of action is a duplicity of suits, and that this court is not vested with the jurisdiction of the subject matter and the parties in this cause; that a certified copy of the Declaration filed in the Circuit Court of Kemper County, Mississippi,

is attached hereto and made a part hereof just as if fully copied herein, and marked as Exhibit "A" hereto.

Respectfully submitted.

/s/ Helen J. McDade
and

/s/ W. D. Moore
Attorneys for Defendants

[Certificate of Service (Omitted in Printing)]

Notice is hereby given to all of said attorneys that the above and foregoing Motion to Dismiss will be called up in the Eastern Division of the Southern District of Mississippi at Meridian, Miss., on the first Monday of the first session of Court hereafter held in Meridian, Mississippi by Hon. Dan M. Russell, Jr.

Witness my signature, this the 18th day of September, 1967.

/s/ Helen J. McDade
HELEN J. MCDADE

and

/s/ W. D. Moore
W. D. MOORE

Attorneys for Defendants

EXHIBIT A TO MOTION TO DISMISS

IN THE CIRCUIT COURT
OF KEMPER COUNTY, MISSISSIPPI

No. 1738

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

DECLARATION

The plaintiffs bring the following causes of action against the defendants and complain as follows:

1. The plaintiffs are Negro citizens of the United States and residents of Kemper County, Mississippi. Eugene Griffin, Renea Johnson, and Lonnie Chamberlin are minors and their respective parents sue on behalf of said minors and in their own right. Ted Coleman is an adult.

2. The defendants, Lavon Breckenridge and James Calvin Breckenridge, are white adult citizens of the United States residing in DeKalb, Kemper County, Mississippi.

3. On July 2, 1966, the minor plaintiffs and Ted Coleman were passengers in an automobile belonging to and operated by R. G. Grady of Memphis, Tennessee. They were travelling upon the federal, state and local highways in and about DeKalb, Mississippi, performing various errands and visiting friends.

4. On July 2, 1966 defendants, acting under a mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes, wilfully and maliciously conspired,

planned, and agreed to block the passage of said plaintiffs in said automobile upon the public highways, to stop and detain them and to assault, beat and injure them with deadly weapons.

FIRST CAUSE OF ACTION

5. Pursuant to their conspiracy, defendants drove their truck into the path of Grady's automobile and blocked its passage over the public road. Both defendants then forced Grady and said plaintiffs to get out of Grady's automobile and prevented said plaintiffs from escaping while defendant James Calvin Breckenridge clubbed Grady with a blackjack, pipe or other kind of club by pointing firearms at said plaintiffs and uttering threats to kill and injure them if defendants' orders were not obeyed, thereby terrorizing them to the utmost degree and depriving them of their liberty.

6. By reason of defendants' malicious and false imprisonment and detention of said plaintiffs, each of them suffered extreme terror, mental anguish and severe emotional distress.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

SECOND CAUSE OF ACTION

7. Paragraphs 1 through 6, inclusive, of this Declaration are herein by reference.

8. Pursuant to their conspiracy, defendants wilfully, intentionally, and maliciously menaced and assaulted each of the said plaintiffs by pointing firearms and wielding deadly blackjacks, pipes or other kind of clubs, while uttering threats to kill and injure said plaintiffs, causing them to become stricken with fear of immediate injury and death and to suffer extreme terror, mental anguish and emotional and physical distress.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for

compensatory damages in the amount of $10,000 and punitive damages in the amount of $20,000.

THIRD CAUSE OF ACTION

9. Paragraphs 1 through 8, inclusive, of this Declaration are incorporated herein by reference.

10. Pursuant to defendants' conspiracy, defendant James Calvin Breckenridge then wilfully, intentionally and maliciously clubbed each of said plaintiffs on and about the head, severely injuring all of them, while both defendants continued to assault said plaintiffs and prevent their escape by pointing their firearms at them.

11. As a direct result of the clubbing and beating of said plaintiffs, each of them sustained a severe concussion and injuries to the brain, head, and adjacent parts of his body, severe lacerations, contusions and abrasions of the scalp resulting in permanent scars, and various residual physical effects from these injuries. These injuries were accompanied by great pain and suffering which some of said plaintiffs still suffer, with some diminution, at the present time and which they will continue to suffer for an indefinite period in the future.

12. As a direct result of the clubbing and beating and the injuries resulting therefrom, each of said plaintiffs was terrorized and suffered extreme fear for the safety and well-being of himself and his family, anxiety, depression, humiliation and other mental anguish and emotional distress, some of which continues until the present time and will continue for an indefinite period in the future.

13. As a direct result of his injuries Ted Coleman, plaintiff, has incurred and will incur in the future, various medical expenses and losses of earnings and earning power.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $25,000 and punitive damages in the amount of $50,000.

FOURTH CAUSE OF ACTION

14. Paragraphs 1 through 12, inclusive, of this Declaration are incorporated herein by reference.

15. As a direct result of injuries and ailments suffered by the minor plaintiffs caused by the acts of the defendants pursuant to their conspiracy, the plaintiff parents of the minor plaintiffs have incurred and will incur in the future various medical expenses and other expenses for the care and treatment of their said minor children.

16. As a direct result of the injuries, ailments and disability suffered by the minor plaintiffs, the plaintiff parents have lost the services and the earnings of their minor children and some will sustain such losses in the future.

17. Defendants wilfully and maliciously intended to inflict, and by their conspiracy and acts pursuant thereto, did inflict upon plaintiff parents mental suffering, terror, fright and fear for the safety and well-being of the minor plaintiffs, the rest of their families and themselves, which continues until the present time and will continue in the future.

WHEREFORE , each of said plaintiff parents demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

/s/ Marian Wright
MARIAN WRIGHT
538½ North Farish Street
Jackson, Mississippi

L. LACKEY ROWE, JR.
DENISON RAY
JONATHAN SHAPIRO
ELLIOTT C. LICHTMAN
233 North Farish Street
Jackson, Mississippi

Attorneys for Plaintiffs

Filed in this Office, Jun. 30, 1967, /s/ J. G. Palmer, Circuit Clerk, Kemper County, Miss.

I, James G. Palmer, clerk of the Circuit Court of Kemper County, Mississippi, do hereby certify that this is a photostatic copy of the original declaration of this case on file in the Circuit Clerks office in Kemper County.

This the 13th day of September, 1967.

/s/ James G. Palmer
JAMES G. PALMER
Circuit Clerk

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—*vs*—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

MOTION TO DISMISS—Filed September 18, 1967

Comes now the Defendants in the above styled and numbered cause by and through their attorneys of record and moves this court to dismiss this cause of action for the following reasons, to-wit:

That this court is not vested with jurisdiction of this cause for the reasons that if the allegations of the Complaint were accepted as true, the same would not come within the purview of the Civil Rights Act of 1964, U.S.C., Title 42, Section 1985, and Title 28, Sections 1331 and 1343 thereof, and that there are no other allegations in the Complaint that would vest jurisdiction of this cause in this court.

Respectfully submitted.

/s/ Helen J. McDade

/s/ W. D. Moore
Attorneys for Defendants

[Certificate of Service (Omitted in Printing)]

Notice is hereby given to all of said attorneys that the above and foregoing Motion to Dismiss will be called up in the Eastern Division of the Southern District of Mississippi at Meridian, Miss., on the first Monday of the first session of Court hereafter held in Meridian, Mississippi by Hon. Dan M. Russell, Jr.

Witness my signature, this the 18th day of September, 1967.

/s/ Helen J. McDade
HELEN J. MCDADE

/s/ W. D. Moore
W. D. MOORE

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., PLAINTIFFS

versus

LAVON BRECKENRIDGE, ET AL., DEFENDANTS

OPINION SUSTAINING MOTION TO DISMISS—
December 1, 1967

This cause is before the Court on defendants' two motions to dismiss, one on the grounds that the federal suit is duplicitous in that the identical cause of action has been filed in a state court, and the second motion on the ground that the allegations do not state a cause of action under Section 1985, Title 42 U.S.C.

Plaintiffs cite *U. S.* v. *Guest*, 383 U. S. 745 as authority for the cause of action. However, this case, as well as *U. S.* v. *Price*, 383 U. S. 787, issued the same day, are based on criminal statutes, not civil, and the Court in each was careful to point out that the issues therein were of statutory construction, not of constitutional power. Accordingly, I do not find them applicable to the present cause. Also in both of those cases the Court found that the indictments charged conspiratorial offenses under "color of law."

Collins v. *Hardyman*, 341 U. S. 651, also cited by plaintiffs, is far more applicable to the instant action. The civil conspiracy charged in *Collins* is that defendants, private individuals, entered into an agreement to deprive plaintiffs of certain rights guaranteed to all. In order to avoid adverse decisions in earlier Fourteenth Amendment cases, the Fourteenth Amendment was not mentioned. Nor did the complaint charge a conspiracy

under color of state law. The Court held this fatal, saying that the complaint was nothing more than an invasion of private rights by private individuals, and that such rights *under the law* and to *protection of the laws* remained equal to the rights of every one else. The Court said: "The facts alleged fall short of a conspiracy to alter, impair or deny equality of rights under the law, though they do show a lawless invasion of rights for which there are remedies in the law of California." *Collins* v. *Hardyman*, supra, p. 662. Also see *Wallach* v. *Cannon*, 357 F. 2d 557; and *Kamsler* v. *M. F. I. Corporation*, 359 F. 2d 752. Particularly applicable is *Bryant* v. *Donnell*, 239 F. Supp. 681, 687, 688, citing from *Collins* v. *Hardyman*, supra.

The motion to dismiss for failure to state a cause of action is sustained.

An order may be prepared accordingly.

/s/ Dan M. Russell, Jr.
United States District Judge

DATED: Dec. 1, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., PLAINTIFFS

versus

LAVON BRECKENRIDGE, ET AL., DEFENDANTS

ORDER OF DISMISSAL—December 14, 1967

This cause came on to be heard on motion to dismiss filed by the Defendants in this cause for the reason that the allegations of the complaint do not state a cause of action under Section 1985, Title 42 U.S.C.; and the court after hearing and considering the said motion, the arguments and briefs of both of the parties hereto, the court finds and so adjudges that the Complaint filed in this cause should be dismissed with prejudice for failure to state a cause of action, and as more specifically set forth in the opinion of the court sustaining Defendants' motion to dismiss, dated December 1, 1967, and which is filed among the papers in this cause.

IT IS, THEREFORE, ordered that the motion filed by the Defendants to dismiss this cause of action for failure to state a cause of action be and the same is hereby sustained and this cause of action be and the same is hereby dismissed with prejudice, and the costs accruing in this cause be and the same are hereby taxed against the Plaintiffs.

ORDERED this the 14th day of December, 1967.

/s/ Dan M. Russell, Jr.
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., PLAINTIFFS

—*vs*—

LAVON BRECKENRIDGE, ET AL., DEFENDANTS

NOTICE OF APPEAL—Filed January 17, 1968

Notice is hereby given that plaintiffs hereby appeal to the United States Court of Appeals for the Fifth Circuit from the December 14, 1967 order of the Court, entered December 18, 1967, dismissing this cause with prejudice for failure to state a cause of action.

Dated: January 17, 1968

/s/ L. Rowe, Jr.
L. LACKEY ROWE, JR.

/s/ Denison Ray
DENISON RAY
233 North Farish Street
Jackson, Mississippi 39201

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 25799

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., APPELLANTS

versus

LAVON BRECKENRIDGE, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

OPINION—April 29, 1969

Before GOLDBERG and AINSWORTH, Circuit Judges, and SPEARS, District Judge

GOLDBERG, Circuit Judge: This civil rights case, ruled by the majority opinion in *Collins* v. *Hardyman*,[1] involves a racially motivated assault committed upon a public highway. Adhering as we must to *Collins*, we affirm the district court's dismissal of appellants' complaint.

Plaintiffs, Negro citizens, brought this suit under the mantle of 42 U.S.C.A. § 1985 (3),[2] popularly known as

[1] 341 U.S. 651, 71 S.Ct. 937, 9 L.Ed. 1253 (1951).

[2] 42 U.S.C.A. § 1985:

* * * *

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the con-

the Ku Klux Klan Act. They alleged in their complaint a conspiracy between defendants Lavon Breckenridge and James Breckenridge to deprive them of their equal protection of the laws and their privileges and immunities under the laws. Specifically they charged that on July 2, 1966, defendants, both white adults, acting under the mistaken belief that R. G. Grady was a worker for the civil rights of Negroes, willfully and maliciously conspired, planned and agreed to block the passage of plaintiffs upon the public highway and to assault, beat and injure them with deadly weapons. It was further alleged that pursuant to this conspiracy defendants drove their truck into the path of Grady's automobile and blocked its passage over the public road. Both defendants then forced Grady and the other plaintiffs from their automobile and, holding them at gun point, began to club Grady with a black jack, pipe or other blunt instrument. During this period defendants repeatedly menaced plaintiffs with threats to kill or injure them, and eventually attacked all plaintiffs with clubs, while preventing escape or resistance with their firearms.

Based on these allegations, plaintiffs seek $10,000 compensatory and $5,000 punitive damages. They claim that as a result of defendants' conspiracy and their acts pursuant thereto, plaintiffs have been deprived of their

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stituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980.

rights, privileges and immunities as citizens of the United States and as citizens of the State of Mississippi, including but not limited to their rights of freedom of speech, movement, association and assembly; their right to petition their government for redress of grievances; their right to be secure in their persons; their right not to be ensalved nor deprived of life, liberty or property other than by due process of law; and finally, their right to travel the public highways without restraint on the same terms as white citizens in Kemper County, Mississippi. The district court dismissed plaintiffs' complaint on the authority of *Collins* v. *Hardyman, supra*, for failure to state a cause of action. The district judge reasoned that the complaint alleged no more than an invasion of private rights by private individuals, and that *Collins* and numerous lower courts had limited § 1985 (3) to actions performed under "color of law." See *Hoffman* v. *Halden*, 9 Cir. 1969, 268 F.2d 280, 291; *Wallach* v. *Cannon*, 8 Cir. 1966, 357 F.2d 557; *Haldane* v. *Chagnon*, 9 Cir. 1965, 345 F.2d 601; *Bryant* v. *Donnell*, W.D. Tenn. 1965, 239 F. Supp. 681; *Van Daele* v. *Vinci*, N.D. Ill. 1968, 294 F.Supp. 71; *Huey* v. *Barloga*, N.D. Ill. 1967, 277 F.Supp. 864; *Swift* v. *Fourth National Bank of Columbus, Georgia*, M.D. Ga. 1962, 205 F.Supp. 563.

On this appeal, plaintiffs forcefully urge that *United States* v. *Guest*,[3] and *Jones* v. *Alfred H. Mayer Co.*,[4] have lifted the state action limitation from § 1985 (3) so that the literal words of that statute[5] (which do not include the words "under color of law") may now be given their unfettered application.

The state action limitation on the various Civil Rights Acts[6] enacted during the Reconstruction Era are trace-

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[3] 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 139 (1966).

[4] 392 U.S. 409, 88 S.Ct. ——, 20 L.Ed.2d 1189 (1968).

[5] See footnote 2.

[6] Civil Rights Act of 1866, 14 Stat. 27 (1866), now, Rev. Stat. § 1978, 42 U.S.C.A. § 1982 (1964); the Enforcement Act, 16 Stat. 140 (1870); the amendments to the Enforcement Act, 16 Stat. 433 (1871); Civil Rights Act of April 20, 1871, 17 Stat. 13 (1871), now, Rev. Stat. § 1980, 42 U.S.C.A. § 1985; Civil Rights Act of March 1, 1875, 18 Stat. 335 (1875).

able to the *Civil Rights Cases*, 1883, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835, in which the public accommodation sections of the Civil Rights Act of 1875 were questioned. Out of those cases, and of course out of the language of the Fourteenth Amendment itself,[7] has grown a long and complicated history in which the state action requirement has undergone considerable expansion [8] and some redefinition, but always with the result that the Fourteenth Amendment and rights flowing from it have been vouchsafed only where there has been interference by state authority, or by those acting under "color" of state authority. *United States* v. *Price*, 1966, 383 U.S. 787, 86 S.Ct. 1152, 16 L.Ed.2d 267. As said by one court, "this distinction between purely private discrimination and discrimination pursuant to 'state action' has persisted for over eighty years. Only discrimination which falls within the latter category warrants Fourteenth Amendment protection and falls within the ambit of the Civil Rights Act." (Section 1985 (3)). *Huey* v. *Barloga*, *supra*, at 869. In the words of the Supreme Court in *United States* v. *Cruikshank*, 1876, 92 U.S. 542, 23 L.Ed. 588:

> "The Fourteenth Amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not add anything to the rights which one citizen has under the Constitution against another. The

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[7] Amendment. XIV. [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[8] See *Note, Fourteenth Amendment Congressional Power to Legislate Against Private Discriminations: The Guest Case*, 52 Cornell L.Q. 586, 591-599.

> equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the Amendment guaranties [sic], but no more." 92 U.S. at 555.

See also *United States* v. *Guest*, 383 U.S. 745, 755, and *Wilkins* v. *United States*, 5 Cir. 1967, 376 F.2d 552, 560, *cert. denied*, 389 U.S. 964, 88 S.Ct. 342, 19 L.Ed.2d 379.

Despite the long history and the persistent durability of the state action limitation, appellants contend that under Section 5 of the Fourteenth Amendment, Congress has the power to punish all conspiracies to violate Fourteenth Amendment rights, with or without state action. They rely for this proposition on *United States* v. *Guest*, *supra*.

Guest involved a criminal prosecution under 18 U.S.C.A. § 241,[9] and not under 42 U.S.C.A. § 1985 (3).[10] A majority of the Court, concurring in the opinion of

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[9] 18 U.S.C.A. § 241.

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

[10] 18 U.S.C.A. § 241 and 42 U.S.C.A. § 1985(3) are closely analogous, and one has been called the criminal "counterpart" of the other. *Baldwin* v. *Morgan*, 5 Cir. 1958 251 F.2d 780, 790. However, the *precise* criminal analogue of the first several clauses in § 1985 (3) was R. S. § 5519, originally part of Section 2 of the Act of April 20, 1871, 17 Stat. 13, 14. It was declared unconstitutional in *United States* v. *Harris*, 1883, 106 U.S. 629, 27 L.Ed. 290. See *Hardyman* v. *Collins*, 9 Cir. 1950, 183 F.2d 308, 317 (dissenting opinion).

Mr. Justice Stewart, reaffirmed the Court's position that the equal protection clause of the Fourteenth Amendment does not reach wrongs done by one or more private individuals against another. 383 U.S. at 755. The Court nonetheless concluded that dismissal of the indictments against private persons was improper because there had been some state involvement in the conspiracy.

Appellants point out that six of the Justices in *Guest* subscribed to the view that Section 5 of the Fourteenth Amendment empowers Congress to enact legislation affecting purely private conduct. They emphasize that the legislative history and the language of § 1985 (3) indicate that Congress not only intended to assert its full power under the Constitution when it enacted the Civil Rights Acts,[11] see *United States* v. *Price*, 1966, 383 U.S. 787, 800, 86 S.Ct. 1152, 16 L.Ed.2d 267, 276, 280-287; *United States* v. *Mosley*, 238 U.S. 383, 387-388, 35 S.Ct. 904, 59 L.Ed. 1355, 1357; Virginia Commission on Constitutional Government, *The Reconstruction Amendments, Debates* (1967), pp. 484-570, but also clearly intended that § 1985 (3) reach private conspiracies. Cong. Globe, 42nd Cong., 1st Sess., 505-506 (1871); Cong. Globe, 42nd Cong., 1st Sess., 481-484.

While we do not gainsay the persuasiveness of this argument, and certainly do not disparage the prognostications of numerous commentators who read in *Guest* the eventual demise of the state action requirement,[12]

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[11] While *Price* and *Mosley* deal with § 241, and not § 1985(3), all indications in the legislative history of the Ku Klux Klan Act suggest that the two sections are to be viewed synopitcally. See Cong. Globe, 42nd Cong. 1st Sess., App. at 69.

[12] Frantz, *Federal Power to Protect Civil Rights: The Price and Guest Cases*, 4 L. in Trans. Q.63, 69-73 (1967); Note, *Fourteenth Amendment Congressional Power To Legislate Against Private Discriminations: The Guest Case*, 52 Cornell L. Q. 586, 599 (1967); Avins, *The Civil Rights Act* of 1875 and The Civil Rights Cases Revisited: *State Action, The Fourteenth Amendment and Housing*, 14 U.C.L.A.L. Rev. 5 (1966); Note, *Congressional Power Under Section 5 of the Fourteenth Amendment May Extend to Punishment of Private Conspiracies to Interfere With The Equal Enforcement of State-Owned Public Facilities*, 45 Tex. L. Rev. 168 (1966); Note, *Civil Rights—Federal Criminal Code Protects*

we cannot subscribe to the view that *Guest* has fulfilled this promised potential. This court does not write on a clean slate. We are compelled to note that most if not all courts which have considered *Guest* since its appearance in 1966 have hewed closely to the majority opinion by Justice Stewart and to the majority's findings of state action. *Jones* v. *Alfred H. Mayer Co.*, 8 Cir. 1967, 379 F.2d 33, 43, *reversed on other grounds;* 392 U.S. 409, 88 S.Ct. ——, 20 L.Ed.2d 1189; *United States* v. *Lester*, 6 Cir. 1966, 363 F.2d 68, 72, *cert. denied*, 385 U.S. 1002, 87 S.Ct. 705, 17 L.Ed.2d 542; *O'Hara* v. *Mattix*, W.D. Mich. 1966, 255 F.Supp. 540, 542; *St. Augustine High School* v. *Louisiana High School Athletic Association*, E.D.La. 1967, 270 F.Supp. 767, 771-772, *aff'd.*, 5 Cir. 1968, 396 F.2d 224. This court has been no exception. *Wilkins* v. *United States*, 5 Cir. 1967, 376 F.2d 552, 570, *cert. denied*, 389 U.S. 964, 88 S.Ct. 342, 19 L.Ed.2d 379. At this late date we cannot give *Guest* a new and novel interpretation. Guided as we are by decisions of other courts, bound as we are by *Wilkins*, and recognizing that *Guest* on its merits does not abolish state action,[13] we are constrained to hold that § 1985 (3) does not reach private conspiracies to interfere with Fourteenth Amendment rights. *Hoffman* v. *Halden, supra; Huey* v. *Barloga, supra.* In so holding we recognize that the citadel of state action is under heavy attack, but we reluctantly concede that as yet it has not fallen.

We are not deterred or persuaded otherwise by the recent Supreme Court case of *Jones* v. *Alfred H. Mayer & Co., supra.* The *Mayer* case is authoritative only as to the constitutionality of a statute, 42 U.S.C.A. § 1982,

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Rights Secured by Fourteenth Amendments, 20 Vand. L. Rev. 170 (1966); Silard, *A Constitutional Forecast: Demise of the "State Action" Limit on the Equal Protection Guarantee*, 66 Col. L. Rev. 855 (1966).

[13] Since we therefore deal here only with the bare terms of the Equal Protection Clause itself, nothing said in this opinion goes to the question of what kinds of other and broader legislation Congress might constitutionally enact under §5 of the Fourteenth Amendment to implement that clause or any other provision of the Amendment." 383 U.S. at 754-755.

enacted pursuant to the Thirteenth and not the Fourteenth Amendment. While *Mayer* is certainly illustrative of the importance of Section 2 of the Thirteenth Amendment as a source of Congressional power,[14] it is not dispositive of the proposition that Congress, under Section 5 of the Fourteenth Amendment, may reach private conduct. Such an important and significant extension of the Fourteenth Amendment, though intimated in several recent Supreme Court decisions,[15] must still await a specific and authoritative pronouncement by that Court.

We feel compelled to add that appellants' failure to state a cause of action under § 1985 (3) is impeded by more than just limitations on the extent of Congressional power under the Fourteenth Amendment. While some of appellants' claims are of Fourteenth Amendment derivation, others such as the right to petition the government for redress of grievances, *cf. United States* v. *Cruikshank*, 1876, 92 U.S. 542, 552-553, 23 L.Ed. 588; *Powe* v. *United States*, 5 Cir. 1940, 109 F.2d 147, *cert. denied*, 309 U.S. 679, 60 S.Ct. 717, 84 L.Ed. 1023; *Wilkins* v. *United States*, 5 Cir. 1967, 376 F.2d 552, and the right to interstate travel and the use of streets and highways in interstate commerce,[16] *United States* v.

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[14] We do not pass upon whether § 1985(3) can be justified as reaching private conduct if read as an exercise of Congressional power under the Thirteenth Amendment, *cf. United States* v. *Harris*, 106 U.S. at 641, or whether *racially* motivated assaults may be considered "badges of slavery." *Cf. Jones* v. *Alfred H. Mayer Co.*, 20 L.Ed.2d at 1207.

[15] *United States* v. *Guest, supra; Katzenbach* v. *Morgan*, 1966, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828; *Heart of Atlanta Motel* v. *United States*, 1964, 379 U.S. 241, 280, 292, 85 S.Ct. 348 13 L.Ed.2d 258, 281, 288; *Katzenbach* v. *McClung*, 1964, 379 U.S. 294, 305, 85 S.Ct. 377, 13 L.Ed.2d 290, 299.

[16] Compare the complaint in the case, *sub judice:*

> "By their conspiracy and acts pursuant thereto, the defendants have wilfully and maliciously, . . . prevented the minor plaintiffs and their parents, . . . from enjoying and exercising . . . their rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi, . . .,"

[Footnote continued on page 35]

Guest, 383 U.S. at 757-760, and 757, n. 13, are attributes of national citizenship not sourced in the Fourteenth Amendment.[17] Unlike appellants' other claims, these rights are "fundamental to the concept of our Federal Union," 383 U.S. at 757, and implicit in our form of republican government.[18] It is well established that Congress has the power to legislate for their protection even

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[16] [Continued]

with the third paragraph of the indictment in *United States* v. *Guest*, 383 U.S. 745, 757, n. 13:

> ". . . the defendants conspired to injure, oppress, threaten, and intimidate Negro citizens of the United States in the free exercise and enjoyment of:
>
> > 'The right to the full and equal use on the same terms as white citizens of the public streets and highways in the vicinity of Athens, Georgia.' " 383 U.S. at 757, n. 13.

[17] With reference to the right to travel, the Supreme Court said in a very significant footnote in *United States* v. *Guest*:

> "As emphasized in Mr. Justice Harlan's separate opinion, § 241 protects only against interference with rights secured by other federal laws or by the Constitution itself. *The right to interstate travel is a right that the Constitution itself guarantees*, as the cases cited in the text make clear. Although these cases in fact involved governmental interference with the right of free interstate travel, their reasoning fully supports the conclusion that the constitutional right of interstate travel is *a right secured against interference from any source whatever, whether governmental or private*. In this connection, it is important to reiterate that the right to travel freely from State to State finds constitutional protection that is quite *independent of the Fourteenth Amendment*." (emphasis added) 383 U.S. at 759, n. 17.

[18] "The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship and, as such, under the protection of any guarantied [sic] by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *United States* v. *Cruikshank*, 92 U.S. at 552.

against interference by private conduct.[19] Under these circumstances it is clear that appellants' failure to state a cause of action under § 1985 (3) for violation of rights of national citizenship must derive from reasons other than constitutional limitations.

Turning to § 1985 (3) itself and the cases which have construed it, we find that rights of national citizenship remain unredressed (when impaired by private conduct), not for want of Congressional power, but for want of a proper statutory vehicle to express it. The Supreme Court has instructed us that § 1985 (3) does not have the statutory equipage for redress of private conspiracies. In *Collins* v. *Hardyman*, *supra*, the court held that § 1985 (3) reached only conspiracies under color of law. The Court was probably led to this result by its doubts as to the constitutionality of the statute, yet it based its decision not on constitutional grounds, but upon a construction of the language of the statute itself.

Collins involved the disruption of a political meeting in Los Angeles County, California, that has been called in order to petition Congress in opposition to the Marshall Plan. The Democratic Club that called the meeting had been organized for the purpose of participating in the election of officers of the United States and for the purpose of engaging in public discussions on issues of national importance. In their complaint, plaintiffs alleged that they had been deprived of equal protection of the laws and privileges and immunities under the laws in that, among other deprivations, they had been denied their right to petition the government for redress of grievances.

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[19] *Ex Parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274 (1884); *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340 (1915); *In Re Quarles*, 158 U.S. 532, 15 S.Ct. 959, 39 L.Ed. 1080 (1895); *Motes* v. *United States*, 178 U.S. 458, 20 S.Ct. 993, 44 L.Ed. 1150 (1900); *United States* v. *Waddell*, 112 U.S. 76, 5 S.Ct. 35, 28 L.Ed. 673 (1884); *Logan* v. *United States*, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429 (1892). See also, Feuerstein, *Civil Rights Crimes and the Federal Power to Punish Private Individuals for Interference with Federally Secured Rights*, 19 Vand. L. Rev. 641, 651-665 (1966).

The district court dismissed the complaint holding that the statute did not afford redress for invasion of civil rights at the hands of individuals. 80 F.Supp. 501. In reversing, the Court of Appeals relied on that part of § 1985 (3) which provides damages for overt acts "whereby another is . . . deprived of having and exercising any right or privilege of a citizen of the United States." *Hardyman* v. *Collins*, 9 Cir. 1950, 183 F.2d 308, 314. The Court of Appeals also relied on the long line of cases developed under § 241:

> "The delineation by the courts of the narrow area of rights which Congress has constitutional power to protect from individual invasion has developed through the application of what is now 18 U.S.C.A. § 241, originally enacted May 31, 1870. This statute has been applied to individual deprivations of the right to vote for federal offices, Ex parte Yarborough, 1884, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274; the right to enjoy the privileges granted by the homestead laws, United States v. Waddell, 1884, 112 U.S. 76, 5 S.Ct. 35, 28 L.Ed. 673; the right to protection from attack while in the custody of a federal marshal, Logan v. United States, 1892, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429; and the right to inform federal officers of violations of federal law, In re Quarles, 1895, 158 U.S. 532, 15 S.Ct. 959, 39 L.Ed. 1080; Motes v. United States, 1900, 178 U.S. 458, 20 S.Ct. 993, 44 L.Ed. 1150. The cases also indicate by way of dictum that the right to assemble for the purpose of discussing the policies of the federal Government and petitioning that Government for redress of grievances is within the scope of direct federal protection." 183 F.2d at 313

On the basis of these precedents, the Court of Appeals reinstated the plaintiffs' complaint. *Accord*, *Robeson* v. *Fanelli*, S.D.N.Y. 1950, 94 F.Supp. 62. It distinguished the case of *United States* v. *Harris*, 1883, 106 U.S. 629, 27 L.Ed. 290, in which the criminal counterpart of § 1985 (3) was declared unconstitutional, on the grounds that the portion of § 1985 (3) which dealt with the rights of

national citizens was clearly severable from the rest of the statute and was therefore insulated from constitutional infirmity.

The Supreme Court, in *Collins*, reversed the Court of Appeals and dismissed the complaint, taking the position that the statute was not severable. Nonetheless it avoided the constitutional challenge raised by *Harris* and argued that privileges and immunities *under the laws* and equal protection *of the laws* required that there be "some manipulation of the law or its agencies." 341 U.S. at 661. Without state involvement, the Court viewed appellants' claims as "no more a deprivation of 'equal protection' or of 'equal privileges and immunities' than it would be . . . to assault one neighbor without assaulting them all, or libel some persons without mentioning others." *Id.* The Court found that appellants' "rights *under the laws* and to protection *of the laws* remained untouched and equal to the rights of every other Californian. . . ." *Id.* The Court concluded:

> "We say nothing of the power of Congress to authorize such civil actions as respondents have commenced or otherwise to redress such grievances as they assert. We think that Congress has not, in the narrow class of conspiracies defined by this statute, included the conspiracy charged here. We therefore reach no constitutional questions." 341 U.S. at 662.

This decision in *Collins*, because it is based on the language of § 1985 (3), and not upon any considerations of Congressional power, is unaffected by any of the opinions in *Guest*, or by the opinion in *Mayer*. We are therefore bound to follow it until it is expressly overruled. We have serious doubts as to its continued vitality,[20]

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[20] See Comment, *Civil Actions for Damages Under the Federal Civil Rights Statutes*, 45 Tex. L. Rev. 1015, 1018-1019:

> "The plain language of the statute and the circumstances surrounding its passage in 1871 indicate a congressional intent to protect the described civil rights *against* all private conspiracies. Nevertheless, in *Collins* v. *Hardyman*, the Supreme Court read the section restrictively and imposed a requirement, as with section 1983, that the prohibited conduct be action under

but we, as an inferior court, cannot expand the statutory girth of § 1985 (3) when we are ". . . faced with a limiting Supreme Court decision which, so far as we are told directly, remains good law." *Jones* v. *Alfred H. Mayer Co.*, 379 F.2d at 43.

We conclude by noting that § 1985 (3) is today a poor remnant of its original conception. Its criminal counterpart has been held unconstitutional, *United States* v. *Harris*, *supra*, and its own constitutionality cast in doubt. Its language has been greatly restricted, *Collins* v. *Hardyman*, *supra*, and its application is no longer in accord with its legislative history. The last is probably the most mystifying. § 241 and § 1985 (3) have the same Reconstruction historicity.[21] They both speak of men going in disguise on the public highway and they both lack the language "under color of law" which appears so clearly in § 1983.[22] Every indication in the legislative history of the period suggests that the Congressional reconstructionists intended to make the streets and highways safe for the lately freed from private as well as

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color of state law. The majority noted that the fourteenth amendment prohibits only certain state action and that this statute, like section 1983, was founded exclusively upon that amendment. Under the Court's interpretation, the only effective difference between the two sections is that one deals with individual action while the other deals with conspiracies. Recent Supreme Court decisions involving the federal criminal statute analogous to section 1985 raise some doubts about the reasoning of the *Collins* case, however, and seem to presage adoption of a more unrestricted interpretation of section 1985."

[21] See footnote 20.

[22] 42 U.S.C.A. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

from public traducers.[23] As said by Justice Frankfurter in *United States* v. *Williams*, 1951, 341 U.S. 70, 76, 95 L.Ed. 758, 763-764, decided during the same term as Collins:

> "Men who 'go in disguise upon the public highway, or upon the premises of another' are not likely to be acting in official capacities. The history of the times—the lawless activities of private bands, of which the Klan was the most conspicuous—explains why Congress dealt with both State disregard of the new constitutional prohibitions and private lawlessness. The sponsor of § 6 [now § 241] in the Senate made explicit that the purpose of his amendment was to control private conduct." 341 U.S. at 76.

We are puzzled as to why this statement pertaining to the legislative history of § 241 is not equally applicable to § 1985 (3). Nor can we discern why "privileges and immunities under the laws" do not include privileges and immunities of national citizenship.[24] Judge Healy,

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[23] Id., 45 Tex. L. Rev. at 1019, n. 27:

> "Congressman Pool, the sponsor of the federal criminal statute from which much of the language of § 1985 was taken, said of his measure in 1870:
>
> > But, sir, individuals may prevent the exercise of the right of suffrage; individuals may prevent the enjoyment of other rights which are conferred upon the citizen by the fourteenth amendment, as well as trespass upon the right conferred by the fifteenth.
> >
> > Not only citizens, but organizations of citizens, conspiracies, may be and are, as we are told, in some of the States formed for that purpose. . . . I cannot see that it would be possible for appropriate legislation to be restored to except as applicable to individuals who violate or attempt to violate these provisions. . . . It matters not whether these individuals be officers or whether they are acting upon their own responsibility. . . .
>
> Cong. Globe, 41st Cong., 2d Sess. 3611, 3613 (1870)."

[24] ". . . the right to travel thus has respectable precedent to support its status as a privilege and immunity of national citizenship. . ."
United States v. *Guest*, 383 U.S. at 766 (dissenting opinion).

dissenting in the Court of Appeals in *Collins*, was of the view that "privileges and immunities under the laws" was derivative from the Fourteenth Amendment and therefore limited the statute only to Fourteenth Amendment rights. His theory was that the similarity of the language used in § 1985 (3) to "the wording of Section 1 of the Fourteenth Amendment shows that Congress, in choosing its language, was thinking of that Amendment and its vindication." 183 F.2d at 315.

This view is somewhat inconsistent with recent Supreme Court pronouncements on § 241. As noted in *United States* v. *Price*, quoting from Justice Holmes in *United States* v. *Mosley*:

> "The source of this section [§ 241] in the doings of the Klu Klux and the like is obvious and acts of violence obviously were in the mind of Congress. Naturally Congress put forth *all its powers* . . ." (emphasis added)

Justices Burton, Black and Douglas expressed the same view of § 1985 (3) in their dissenting opinion in *Collins*. Theirs was the position that Congress had the power, *quite independent of the Fourteenth Amendment*,[25] to create a federal cause of action for the abridgment of federally protected rights. Moreover, they took the position that Congress had actually done so in § 1985 (3):

> "Congress certainly has the power to create a federal cause of action in favor of persons injured by private individuals through the abridgment of federally created constitutional rights. It seems to me that Congress has done just this in RS § 1980 (3) [1985 (3)]. This is not inconsistent with the principle underlying the Fourteenth Amendment. That Amendment prohibits the respective states from making laws abridging the privileges or immunities of citizens of the United States or denying to any person within the jurisdiction of the state the equal protection of the laws. Cases holding that those

[25] See footnote 17 *supra*.

clauses are directed only at state action are not authority for the contention that Congress may not pass laws supporting rights which exist apart from the Fourteenth Amendment." 341 U.S. at 664.

The solicitude recently shown by the Supreme Court in *United States* v. *Guest, supra,* for the protection of the right to travel as a "privilege and immunity of national citizenship," 383 U.S. at 766, raises some doubts as to the continued vitality of *Collins.*[26] Even more recently the Court has disapproved the practice of reading civil rights legislation more restrictively than either the history or the language of the statutes require:

> "As we said in a somewhat different setting two Terms ago, 'we think that history leaves no doubt that, if we are to give [the law] the scope that its origins dictate, we must accord it a sweep as broad as its language.' United States v. Price, 383 U.S. 787, 801, 16 L.Ed.2d 267, 276, 86 S.Ct. 1152. 'We are not at liberty to seek ingenious analytical instruments,' ibid., to carve from § 1982 an exception for private conduct—even though its application to such conduct in the present context is without established precedent." *Jones* v. *Mayer Co.*, —— U.S.

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[26] See footnote, 20, *supra.* See also Note. *Federal Criminal Code Protects Rights Secured by Fourteenth Amendment,* 20 Vand. L. Rev. 170, 176:

> "A third immediate implication of the instant case [*Guest*], without reference to the separate opinions, is its possible effect upon application of the civil counterpart to section 241, which gives a victim of civil rights violations a cause of action for damages against the violator. Since this civil provision is similar in wording to section 241, its development has closely paralleled that of its criminal counterpart. In fact, the courts seem to consider holdings in both the criminal prosecutions and the civil actions when deciding either type of case. This practice has led to considerable confusion in the civil cases, where, for example, violations of equal protection rights give rise to a cause of action while denials of due process do not. If this parallelism in the interpretation of the civil and criminal sections continues, it would follow that the victim of any rights violation would now have a cause of action against the violator."

In view of these recent changes, it would not surprise us if *Collins* v. *Hardyman* were disapproved and if § 1985 (3) were held to embrace private conspiracies to interfere with rights of national citizenship.[27] In the context of voting rights the statute has already been so applied.[28] See *Paynes* v. *Lee*, 5 Cir. 1967, 377 F.2d 61. And where Congress has regulated in the area of interstate transportation, the statute has likewise been invoked. *Baldwin* v. *Morgan*, 5 Cir. 1958, 251 F.2d 780, 791. For many years § 241 has been applied to private conspiracies against rights of national citizenship,[29] and why § 1985

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[27] See the opinion of Mr. Justice Brennen in *United States* v. *Guest, supra*, where the *dissenting* opinion in *Collins* v. *Hardyman* is cited. 383 U.S. at 779.

[28] *Paynes* v. *Lee*, 5 Cir. 1967, 377 F.2d 61, was based upon the statutory specificity of § 1985(3) with reference to the right to vote:

> "* * * or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy * * *"

This section of the statute was not limited by the decision in *Collins:* 341 U.S. at 660. We distinguished *Collins* by saying:

> "The denial of a Federal remedy against persons not acting under color of state law is only in cases where the asserted right stems from the Fourteenth Amendment and the claim is for damages resulting from an abridgment of privileges or immunities or a denial of equal protection of the laws. Such was the case of Collins v. Hardyman, supra. Such was the case in Wallach v. Cannon, 8 Cir. 1966, 357 F.2d 557, and in Shemaitis v. Froemke, 7 Cir. 1951, 189 F.2d 963. The Fourteenth Amendment is only a protection against the encroachment upon enumerated rights by or with the sanction of the State. The interference with a federally protected right to vote is something more and something different. Moreover it has had the specific attention of Congress which has provided a specific remedy for interference by private individuals." 337 F.2d a 63-64.

[29] See footnote 19, *supra*.

(3) should be given a narrower compass when its constitutionality would be no further impaired [30] or its language further abused has mystified the commentators.[31] Nonetheless, *Collins* clearly denied redress for private interference with rights of national citizenship when it overruled the judgment of the Court of Appeals. Since we may not adopt what the Supreme Court has expressly rejected, we obediently abide the mandate in *Collins*.

The judgment of the district court in dismissing the complaint is

AFFIRMED.

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[30] The court in *Collins* limited § 1985(3) to state action in part to avoid the constitutional complications discussed in Harris. It is not clear why this limitation had to be extended to rights *not* derivative from the Fourteenth Amendment, particularly when the court in construing § 241 has required state action only for Fourteenth Amendment rights.

[31] Note, *Collins* v. *Hardyman: More on the Civil Rights Act*, 46 Ill. L.Rev. 931, 936:

> "The Supreme Court has repeatedly upheld the constitutionality of the criminal sanctions of the Civil Rights Act and included within the area of its protection the right to vote for federal officers, the right to enjoy the privileges granted by the homestead laws of the United States, the right to protection from attack while in the custody of a federal marshal, and the right to inform federal officers of a violation of federal law. In these cases the Court did not require, as a prerequisite to federal protection, that the individuals charged must have acted under color or sanction of state law. Neither did they inquire as to the availability of remedial action under state law. Why then should the Court make such limitations under the civil sanctions of civil rights legislation? Under the decision of *Connally* v. *General Construction Company*, there is no distinction between the power of Congress to declare given conduct a crime and the ability to give a person injured by such conduct an action for damages."

See also, Note, *Civil Rights—Federal Civil Rights Act* § 47(3) *Permits Civil Action Only Against Persons Acting Under Color of State Law*, 100 U.Pa.L.Rev. 121.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1968

No. 25799

D. C. Docket No. 1417—Civil Action

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., APPELLANTS

versus

LAVON BRECKENRIDGE, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Before GOLDBERG and AINSWORTH, Circuit Judges,
and SPEARS, District Judge

JUDGMENT—April 29, 1969

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel for appellants, and taken under submission by the Court upon the record & briefs on file for appellees;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that appellants pay to appellees the costs on appeal to be taxed by the Clerk of this Court. Issued as Mandate: May 22, 1969

SUPREME COURT OF THE UNITED STATES

No. 380 Misc., October Term, 1969

EUGENE GRIFFIN, ETC., ET AL., PETITIONERS

v.

LAVON BRECKENRIDGE, ET AL.

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1517 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

May 4, 1970

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 144

EUGENE GRIFFIN, ET AL., PETITIONERS

v.

LAVON BRECKENRIDGE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This case presents a fundamental question: Whether federal law affords civil redress to the victims of concerted racial violence calculated to deter the exercise of basic rights by the members of the black community. The answer turns upon a correct construction of the Amendments to the Constitution adopted immediately following the Civil War and the implementing legislation passed by Congress during the Reconstruction era. Although much that touches the subject has been written in this Court during the intervening years, the fact is that the question remains unsettled today, so long after the operative enactments.

STATUTE INVOLVED

The full text of 42 U.S.C. 1985(3) is as follows:

> If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

We stress, at the outset, the boundaries of the issue. The present complaint alleges that two white persons, acting together but without any color of authority from the State, stopped five black citizens travelling in a car (one of whom they mistakenly believed was a civil rights worker), held their victims at gun point and seriously beat them. This was done, it is alleged, because the travellers were black and with the purpose of preventing them, and deterring others of their race, from enjoying their civil rights. These were listed in the complaint as "including but not limited to" the rights of petitioners "and other Negro-Americans" to "freedom of speech, movement, association and assembly; the right to petition their government for redress of grievances; their right to be secure in their person; their right not to be enslaved nor deprived of life, liberty or property other than by due process of law, and their rights to travel the public highways without restraint" (A. 6; see, also, A. 5).

The question is whether these allegations state a claim for monetary damages under 42 U.S.C. 1985(3) (derived from Section 2 of the Ku Klux Act of April 20, 1871) which affords such relief to the victims of any combination of "two or more persons in any State or Territory [who] conspire * * * for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws * * *." The courts below thought not, the court of appeals affirming the dismissal of the

complaint with apparent reluctance but believing itself compelled to do so by this Court's decision in *Collins* v. *Hardyman,* 341 U.S. 651. We disagree, and, accordingly, must confront the further question whether the statute is constitutional insofar as it covers the case—an issue suggested by the Court's opinion in *Hardyman* and the ruling in *United States* v. *Harris,* 106 U.S. 629, invalidating the criminal counterpart of Section 1985(3). Again, we answer in the affirmative, believing that both the Thirteenth and Fourteenth Amendments authorize this legislation.

ARGUMENT

I. THE COMPLAINT STATES A CLAIM WITHIN SECTION 1985(3)

The question whether Section 1985(3) embraces our case cannot be resolved by looking to the prior decisions of this Court. Indeed, at one extreme, there are the rulings in *United States* v. *Harris,* 106 U.S. 629, and *Baldwin* v. *Franks,* 120 U.S. 678, which read the identically worded criminal provision from a common source[1] very broadly to reach acts of violence

[1] Both the civil and criminal provisions originated in §2 of the Ku Klux Act of April 20, 1871, 17 Stat. 13, which, in relevant part, read as follows:

> That if two or more persons within any State or Territory of the United States * * * shall conspire together, or go in disguise upon the public highway or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or any class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from

committed by entirely private groups against individuals without regard to their race or membership in

giving or securing to all persons within such State the equal protection of the laws, or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation, or threat to prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime, and, upon conviction thereof in any district or circuit court of the United States or district or supreme court of any Territory of the United States having jurisdiction of similar offences, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the court may determine, for a period of not less than six months nor more than six years, as the court may determine, or by both such fine and imprisonment as the court shall determine. And if any one or more persons engaged in any such conspiracy shall do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby any person shall be injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the person so injured or deprived of such rights and privileges may have and maintain an action for the recovery of damages occasioned by such injury or deprivation of rights and privileges against any one or more of the persons engaged in such conspiracy, such action to be prosecuted in the proper district or circuit court of the United States, with and subject to the same rights of

any definable class,[2] and, accordingly, struck down the statute as unconstitutional. At the other pole is *Collins* v. *Hardyman*, 341 U.S. 651, in which (to borrow the characterization used in *Adickes* v. *Kress & Co.*, 398 U.S. 144, 165 n. 31) "the Court in effect interpreted § 1985(3) to require action under color of law even though this element is not found in the express terms of the statute." More recently, however, the Court has indicated that the matter remains open, by noting

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appeal, review upon error, and other remedies provided in like cases in such courts under the provisions of the act of April ninth, eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication."

It was in the Revised Statutes of 1874 that the criminal and civil provisions were first separately stated, as § 5519 and § 1980, respectively. Until it was repealed in 1909 (Act of March 4, 1909, 35 Stat. 1088), § 5519 punished the same conspiracies as § 1985(3)—except those directed against voting in federal elections—in the identical words. In *Collins* v. *Hardyman*, *supra*, 341 U.S. at 657, the language of the two sections is said to be "indistinguishable."

[2] The indictment in *Harris* (106 U.S. at 629–632) alleged that a group of twenty armed men seized four prisoners from the custody of a local sheriff and beat them, the claim being that this reflected both a conspiracy to deprive the prisoners of the "equal protection of the laws" and a conspiracy "for the purpose of preventing and hindering the constituted authorities * * * from giving and securing to [them] * * * the equal protection of the laws * * *." Neither the race of the assailants nor of the victims was stated, and it was not alleged that the latter were otherwise members of any identifiable class. The Court expressly held that the actual charge "would be a good indictment under the law if the law itself were valid" (106 U.S. at 639), and went on to construe the statute as reaching purely private conduct (106 U.S. at 639–640) directed by whites against whites (106 U.S. at 641).

that it was not "intimating any view concerning the correctness of the Court's interpretation of § 1985(3) in *Collins*." *Adickes* v. *Kress & Co., supra,* 398 U.S. at 165, n. 31. See, also, Mr. Justice Harlan, concurring, in *Monroe* v. *Pape,* 365 U.S. 167, 200–201, particularly n. 9. And, so, we must turn elsewhere to find a middle ground between what is, in our view, the too expansive reading of *Harris* and the too restrictive construction reflected in *Collins*.

1. We begin with a textual analysis of the provision, as explicated in *Collins*. See 341 U.S. at 659–660. Following that opinion, we read the statute, so far as relevant to our case, as allowing a recovery in damages to anyone "injured in his person or property" by "any act in furtherance of the object" of a "conspiracy" defined by the forepart of the section. Since the requirement of an injury and its causal connection is plainly satisfied here, we focus on the statutory definition of the conspiracy aimed at. Here, too, we are content to adopt the summary given in *Collins:* "Its essentials, with emphasis supplied, are that two or more persons must conspire (1) for the purpose of *depriving* any person or class of persons of the *equal protection of the laws,* or of *equal privileges and immunities under the law;* or (2) for the purpose of preventing or hindering the constituted authorities from giving or securing to all persons the equal protection of the laws; or (3) to prevent by force, intimidation, or threat, any citizen entitled to vote from giving his support or advocacy in a legal manner toward election of an elector for President or a member of Congress; or (4) to injure any citizen in person or

property on account of such support or advocacy." As is happens, it is equally true of the present suit that "[t]here is no claim that any allegation brings this case within the provisions that we have numbered (2), (3), and (4), so we may eliminate any consideration of those categories. The complaint is within the statute only if it alleges a conspiracy of the first described class. It is apparent that this part of the Act defines conspiracies of a very limited character. They must, we repeat, be 'for the purpose of *depriving* * * * of the *equal protection of the laws,* or of *equal privileges and immunities under the laws.*"

The critical question, then, is whether the sort of conduct disclosed by the complaint may fairly be characterized as intending to deprive the petitioners of the "equal protection of the laws" or "equal privileges and immunities under the laws." The *Collins* opinion apparently answers in the negative, on the sole ground that, unless "the law or its agencies [were] to give sanction or sanctuary" to private conduct, the victims' "rights *under the laws* and to *protection of the laws* remain untouched and equal to the rights of every other [person within the State]" (341 U.S. at 661). We believe the opposite conclusion is warranted, for several reasons.

First, as a matter of language, there is no reason to restrict the expression "deprive * * * of the equal protection of the laws or of equal privileges and immunities under the laws" to the situation in which State laws are unequal or are unequally applied by State officers. It would be different if the statute were addressed only to the "State" (as in the Equal Pro-

tection Clause of the Fourteenth Amendment) or to those who are acting "under color of any law" (as in 42 U.S.C. 1983 and 18 U.S.C. 242, which, on the other hand, are not limited to the protection of "equal" rights). But, in terms, our provision speaks to any "two or more persons," presumably including ordinary citizens without any official status or authorization from the State. The only question, then, is whether anyone not wielding State power or carrying out State policy can be deemed capable of "depriving" one class of persons of the same legal protection or legal rights as others enjoy. We think the answer is clear. Private individuals, especially when acting in groups, may effectively deprive citizens of the equal benefit of the laws. This can happen, as another portion of the statute expressly contemplates, by action against State officials to prevent them from affording equal treatment. Or it can result from acts of intimidation aimed directly at those whom the conspirators wish to deter from exercising their legal rights. In such a case, it may be that the "right" of the victims to the benefit of equal laws is "untouched"; but they have, nevertheless, been deprived of the enjoyment of that guaranty.[3]

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[3] As Mr. Justice Brennan has recently noted, "deprivation" of a constitutional right cannot mean "extinguishment," else the provision has no bite whatever since only a constitutional amendment can legally abrogate such a right. See *Adickes* v. *Kress & Co.*, *supra*, 398 U.S. at 223–224. It has, of course, long been recognized that the constitutional guaranty of equal protection of the laws includes a right to equal enjoyment of the laws' benefits (see *infra*, p. 31). There is no reason to read more narrowly the same language in the statute.

A second objection to reading Section 1985(3) as reaching only action under color of law is that it produces several anomalies. One is that such a construction makes the statute wholly superfluous in light of Section 1983—originally § 1 of the same enactment of which our provision was § 2. That Section already allowed recovery for injuries resulting from acts under color of law invading any right secured by federal law, constitutional or statutory—which of course includes the right to obtain "equal protection" from those acting under State authority (see *Adickes* v. *Kress & Co., supra*).[4] Also incongruous (as three members of the Court noted in *Collins* v. *Hardyman, supra*, 341 U.S. at 664) is the image of State officials, or persons shielded by the umbrella of State law, "go[ing] in disguise on the highway," an activity which our statute contemplates. And it would be very strange if Congress, having used unqualified words—"two or more persons"—at the beginning of the provision to encompass every potential conspirator, then narrowed it to include only State agents by the very indirect device of defining an actionable conspiracy as one composed of persons with official power to deprive citizens of the "equal protection of the laws."

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[4] 42 U.S.C. 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Finally, the historical context and legislative history of the statute bely any purpose to confine its reach in the way suggested by the *Collins* opinion. As we have noted, Section 1985(3) derives from Section 2 of the Act of April 20, 1871, popularly known as the "Ku Klux Act". The activities of that organization and others like it, operating wholly outside the law, have been sufficiently noticed here as a primary concern of the Reconstruction Congress. It is enough to point out that on other occasions the Court has invoked the evident purpose to deal with such conspiracies to show that contemporary legislation reached purely private conduct. See, *e.g.*, *Jones* v. *Mayer Co.*, 392 U.S. 409, 436 (§ 1 of Civil Rights Act of 1866); *Ex parte Yarbrough*, 110 U.S. 651, 667 (§ 6 of the Act of May 31, 1870); and see *United States* v. *Price*, 383 U.S. 787, 804–805. The same reasoning is obviously applicable in the case of a statute so uniquely pre-occupied with this kind of lawlessness. See *Monroe* v. *Pape*, 365 U.S. 167, 174. That was, indeed, the conclusion of a more contemporary Court in *United States* v. *Harris*, *supra*, which went so far as to suggest that the indistinguishably worded criminal provision derived from the same Section 2 of the 1871 Act embraced *only* private conspiracies. 106 U.S. at 640. See, also, Mr. Justice Burton, joined by Mr. Justice Black and Mr. Justice Douglas, dissenting in *Collins* v. *Hardyman*, *supra*, 341 U.S. at 663–664.

In light of the Court's very recent canvassing of the subject in *Adickes*, and earlier in *Monroe* v. *Pape*, *supra*, it would be redundant to quote from the legislative debates to show that Congress believed it was

here dealing with private conduct. The *Adickes* opinion concisely summarizes the matter: in contrast with Section 1 (now 42 U.S.C. 1983), "§ 2 of the 1871 Act [now 42 U.S.C. 1985(3)], a provision aimed at private conspiracies with no 'under color of law' requirement, created a great storm of controversy, in part because it was thought to encompass private conduct" (398 U.S. at 165). It may be added that this reach which worried the opponents of the Section was not denied by its proponents, but, on the contrary, was stressed. See, *e.g.*, Cong. Globe, 42d Cong., 1st Sess., App. 69 (Rep. Shellabarger), 478 (same), 481–484 (Rep. Wilson), 485 (Rep. Cook), App. 188 (Rep. Willard), 505–506 (Sen. Pratt), 514 (Rep. Poland). Most such statements, we note, were specifically directed at the provision which concerns us, involving conspiracies designed to work a deprivation of "the equal protection of the laws".

2. The overwhelming evidence that the framers of Section 1985(3) meant to reach wholly private conspiracies cannot be diluted, we submit, by suggesting that only the Klan at its strongest, or a comparable force, was in mind. See *Collins* v. *Hardyman, supra,* 341 U.S. at 662. The clear answer is that given in *United States* v. *Mosley,* 238 U.S. 383, 387, 388, with respect to the similarly-worded 18 U.S.C. 241, another conspiracy provision of the Reconstruction era which in terms reaches any "two or more persons", albeit its "source in the doings of the Ku Klux and the like is obvious." As Mr. Justice Holmes said for the Court, "now that the Ku Klux have passed away * * * we cannot allow the past so far to affect the present as

to deprive citizens of the United States of the general protection which on its face [the statute] most reasonably affords."

That has been the Court's approach more recently in construing Reconstruction legislation, eschewing "ingenious analytical instruments" which would avoid giving the statute "a sweep as broad as its language." *United States* v. *Price, supra,* 383 U.S. at 801; *Jones* v. *Mayer Co., supra,* 392 U.S. at 437. And the same rule should obtain here: on its face, Section 1985(3) reaches a conspiracy involving as few as "two or more persons", language that encompasses a great deal besides the "private army" associated with the Klan of a century ago.

Nor is this taking undue advantage of inadvertently loose words, "a mere slip of the legislative pen" (*Jones* v. *Mayer Co., supra,* 392 U.S. at 427). As Mr. Justice Harlan has noted, in what may properly be termed a classic understatement, "the legislative history is not without indications that what the words of the statute seem to state was in fact the meaning assumed by Congress." *Monroe* v. *Pape, supra,* 365 U.S. at 201 (concurring opinion). We need only reproduce one passage quoted in the margin of that opinion (*id.* at n. 10), where an opponent of the legislation remarks:

> "* * * It does not require that the combination shall be one that the State cannot put down; it does not require that it shall amount to anything like insurrection. If three persons combine for the purpose of preventing or hindering the constituted authorities of any State from extending to all persons the equal protection of the laws, although those persons

> may be taken by the first sheriff who can catch them or the first constable, although every citizen in the country may be ready to aid as a *posse,* yet this statute applies. It is no case of domestic violence, no case of insurrection, and no case, therefore, for the interference of the Federal Government, much less its interference where there is no call made upon it by the Governor or the Legislature of the State." [Cong. Globe, 42d Cong., 1st Sess.], App. 218 (Senator Thurman); see also *id.,* at 514 (Rep. Farnsworth).

3. It does not follow, however, that Section 1985(3) deals with all group conduct which interferes with the enjoyment of rights. In our view, the *Harris* decision read too much into the statute when construing it as reaching every conspiracy invading life, liberty or property. That might well have been within the coverage of the original version of the provision, which omitted the word "equal". See Cong. Globe, 42d Cong., 1st Sess. 317. But it was precisely to overcome the objection that the bill encompassed all ordinary torts and crimes that it was amended to confine its reach to deprivations of equality, rather any deprivation of rights. See opinion of Frankfurter, J., in *Monroe* v. *Pape, supra,* 365 U.S. at 229-234, particularly nn. 48, 49. Nor was this a meaningless change of words, carrying forward the full original coverage under an "equal protection" label. We fully accept the statement in *Collins* v. *Hardyman, supra,* 341 U.S. at 661, that it is no deprivation of "equal protection" or of "equal privileges and immunities" within the meaning of Section 1985(3) "to assault one neighbor without assaulting them all, or to libel some

persons without mention of others." Indeed, we have no occasion here to quarrel with the holding in *Collins* that the facts revealed there do not amount to a deprivation of "equal protection."

The scope of the provision, we submit, is this: that Federal law will intervene whenever group conduct (usually wholly unsanctioned by State authority) attempts to prevent a class of citizens from enjoying, equally with others, the "protection" of State or federal "laws" or the "privileges and immunities" they grant[5]—whether this is sought to be accomplished by

[5] Throughout the preceding discussion, we have assumed that the reference to "laws" in the expressions "equal protection of the laws" and "equal privileges and immunities under the laws" encompassed both federal and State law, in the broadest sense. For the purpose of this case, however, the correctness of that conclusion is of no importance, provided only the term "laws" in the "equal protection" provision includes all State governmental actions that would be embraced by the Equal Protection Clause of the Fourteenth Amendment—an undisputable proposition. That is a fully sufficient basis for recovery under the present complaint.

It may be that the "privileges and immunities under the laws," the "equal" enjoyment of which our provision protects, do not include those conferred by State law. We are inclined to the opposite view, however, because that seems the natural reading of the words, and a result strongly suggested by the Fourteenth Amendment background of the statute. We must remember that, at the time, the distinction later drawn between privileges of *national* citizenship and privileges derived from State citizenship was not understood. At all events, the statute, in this part, does not speak of privileges and immunities "of citizens of the United States" (like Section 1 of the Fourteenth Amendment), but, rather, privileges and immunities "under the laws," presumably including the same State "laws" just referred to in the "equal protection" provision. Finally, since the guarantee is one of *equality*, there could be no constitutional reason for limiting it to federally-granted rights:

pressuring government officials to discriminate or by intimidating the ultimate victims from asserting their legal rights. To be sure, Section 1985(3) is not in unambiguous terms confined to *class* discrimination, since it speaks of "depriving * * * *any person or* class of persons." But it is highly doubtful if any assault against a single individual committed without regard to his membership in a class, and aiming at him alone, was within the contemplation of Congress, many of whose members conditioned their support of the legislation upon adoption of the narrowing amendment. Nor is it clear that such an isolated "inequality" could qualify as a denial of "equal protection" even if a State agency were accountable. See *Snowden* v. *Hughes,* 321 U.S. 1. The proposition is all the more dubious in the context of private action. At all events, there is no occasion here to read into the statute any purpose to reach more than invidious class discriminations. Indeed, for the present case, it is enough to say that Section 1985(3) strikes at group efforts to deprive one race of their legal rights, which was, of course, the main thrust of the enactment.

4. We have noted that the complaint purports to specify certain rights against which the conspiracy was directed. This may be relevant, as the court below evidently believed.[6] Cf. *Screws* v. *United States,* 325 U.S. 91; *United States* v. *Guest,* 383 U.S. 745. But, in

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the Equal Protection Clause enjoins the State to avoid discrimination with respect to the privileges and immunities derived from State, as well as federal, law.

[6] The court of appeals apparently read the complaint as alleging an interference with the right of *interstate* travel, held protected against private conspiracies in *United States* v. *Guest,*

our view, the attempt to particularize the rights affected is both unreal and unnecessary in a case like the present one. Cf. Mr. Justice Rutledge, concurring, in *Screws* v. *United States, supra,* 325 U.S. at 114–117. It is a rare case in which the victim can show precisely what protected activities the assault against him was meant to inhibit. Indeed, in the typical instance of this kind, the conspirators themselves have no more specific object than to deter black citizens from asserting a claim to equality in civic life—whether it be equal enjoyment of the streets, public transport, public schools or other public facilities, an equal share in the benefits conferred and services performed by government, equal access to the franchise and other avenues of political redress, equal immunity from governmental interference, and equal governmental protection, in their exercise of basic freedoms, or equal rights of property or contract. It is enough under the statute, we believe, if the evidence reveals a conspiracy to prevent Negroes from equally enjoying their legal rights generally, stated compendiously in the usage of

383 U.S. 745, 757–760, and the right to petition the *federal* government for a redress of grievances, recognized as an attribute of national citizenship in *United States* v. *Cruikshank*, 92 U.S. 542, 552, and by the dissent in *Collins v. Hardyman, supra,* 341 U.S. at 663. See A. 33–44. If that is a correct construction of the pleading, the case is very different. But, for our part, we find no allegation that the victims were travelling from one State to another, were using interstate highways, were hindered in petitioning the national government, or that the conspiracy was in any other respect directed at the exercise of "federal" rights not founded on the post-Civil War Amendments. See A. 5, 6.

the time as "equal protection of the laws" and "equal privileges and immunities under the laws."

In most contexts, that comes to the same thing as alleging a purpose to terrorize or otherwise intimidate black citizens on account of their race. Considering the conditions prevailing at the time of the relevant enactments, it would have been wholly natural to infer an intent to inhibit equal enjoyment of rights by Negroes from an assault that was shown to be motivated by the race of the victim, rather than by personal animosity against him as an individual. And, unhappily, circumstances have not so changed in a century as to render such a presumption unreasonable today—subject to rebuttal in a proper case.

It is another matter what is sufficient to establish that the assault was directed at the race of the victim, not at the man. Obviously, the fact that a conspiracy is involved, rather than individual action, will aid in that showing. See the opinion of Mr. Justice Douglas for four members of the Court in *United States* v. *Williams,* 341 U.S. 70, at 94. But, since the case was not allowed to go to trial, there is no occasion, at this stage, to speculate what evidence might be adduced in support of the claim. Plainly, the complaint itself was adequate. Although it is questionable whether the charge in a civil case need be tested by the strict standards of a criminal indictment, we accept the ruling in the *Cruikshank* case that it is not enough to allege that the plaintiff was black and the defendant white; as the Court there said (92 U.S. at 556), "[w]e may suspect that race was the cause of the hostility; but it is not so averred." Here, however, that pleading

requisite was more than satisfied. Not only was such a conclusory allegation included in terms, but the racial motive of the conspiracy was particularized as we have seen.

Assuming, as we must, that the plaintiffs can show that they were the victims of a conspiracy designed to intimidate them, because of their race, and, through them, the black community, we conclude that a case within Section 1985(3) has been stated. And we turn now to the constitutional inquiry—whether Congress has power to reach the conduct in suit.

II. SECTION 1985(3), CONSTRUED TO REACH THE CONDUCT ALLEGED, IS APPROPRIATE LEGISLATION UNDER THE THIRTEENTH AND FOURTEENTH AMENDMENTS

1. We approach the constitutional question in terms of the case. As we have attempted to show, the present complaint states a claim within that provision of Section 1985(3) which gives recovery to the victims of unofficial group conduct directed toward "depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." We are therefore excused from discussing the balance of the statute, comprising plainly severable provisions concerned with pressures applied against "the constituted authorities" and interference with voting in federal elections. Nor do we believe ourselves obligated to defend every possible application of the language on which we rely here. For present purposes, it is enough if the provision invoked is constitutional insofar as it reaches the kind of conduct revealed in the complaint—a conspiracy of violence directed against black

citizens on account of their race which, in context, has the obvious objective of deterring Negroes in the community from equally enjoying the benefits of law.

If, contrary to the opinion in *United States* v. *Harris, supra,* the portion of Section 1985(3) involved here was meant to go no further, there is no arguable severability problem. But we suggest the Court may properly consider the constitutional question in the context of this case without finally determining the full reach of the statute. That is so, in our view, because the conduct in suit is so obviously the core of the problem at which the statute was aiming that one can say with assurance that Congress would have enacted the measure for this purpose even if it had been known that nothing more could be brought within coverage. For the same reason, there can be no problem of fair notice in "severing out" the kind of situation involved here: Whatever doubts may exist whether conduct in the periphery is meant to be encompassed, the legislative purpose to reach racially-motivated assaults is plain, assuming it is constitutionally possible.

There is, of course, no novelty in this approach. Indeed, that is what the Court did in *Collins* v. *Hardyman* with respect to this very provision—albeit the statute was read more restrictively there than we believe constitutional problems required. The contrary course followed in *United States* v. *Harris,* and *Baldwin* v. *Franks, supra,* was in effect repudiated. And a like all-or-nothing ruling in *United States* v. *Reese,* 92 U.S. 214, has not survived as a viable precedent. The authoritative rule today is that articulated

in *United States* v. *Raines,* 362 U.S. 17, 20–24. We submit it governs here.

2. The constitutional question, limited to the dimensions of the case, is whether Congress may reach group action directed against Negroes on account of their race, which is calculated to prevent them from equally enjoying their civil rights as citizens of State and Nation. Our submission is that both the Thirteenth and Fourteenth Amendments authorize federal legislation to this end and that Section 1985(3), as applied to the conduct in suit, is an appropriate exercise of that power.

While we believe either Amendment, taken alone, vindicates our provision, there is no proper objection to invoking both the Thirteenth and Fourteenth Amendments and deriving the necessary legislative power from the combined force of the two Enforcement Clauses. The principle is well settled that Congress may borrow from more than a single source at one time. The governing rule is stated in the following passage from the *Legal Tender Cases,* 12 Wall. 457, 534:

> * * * it is not indispensable to the existence of any power claimed for the Federal government that it can be found specified in the words of the Constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more than one of the substantive powers expressly defined, or from them all combined. It is allowable to group together any number of them and infer from them all that the power claimed has been conferred. * * *

See, also, *Veazie Bank* v. *Fenno,* 8 Wall. 533, 548–549; *Edye* v. *Robertson,* 112 U.S. 580, 595–596; *United States* v. *Gettysburg Electric R. Co.,* 160 U.S. 668, 683.

Nor is it any objection to invoking the Thirteenth Amendment that the original statute was passed primarily "to enforce the provisions of the Fourteenth Amendment." See 17 Stat. 13. As the cases just cited make clear, federal legislation is not a nullity merely because the enacting Congress mislabelled, or misunderstood, the true source of its power. As a matter of fact, however, the Ku Klux Act of 1871 recites that it was drawn to implement the Fourteenth Amendment "and for other Purposes." *Ibid.* The comparable title of the Enforcement Act of 1870, mentioning only enforcement of "the Right * * * to vote" and "other Purposes" (16 Stat. 140), has been deemed sufficient to justify construing Section 6 of that measure (now 18 U.S.C. 241) as embacing rights protected by the Fourteenth Amendment (*United States* v. *Price, supra,* 383 U.S. at 797–806), as well as other provisions of the Constitution (*United States* v. *Guest,* 383 U.S. 745, 757–760). See, also, *Katzenbach* v. *Morgan,* 384 U.S. 641, sustaining one section of the similarly entitled Voting Rights Act of 1965 as appropriate legislation under the Fourteenth Amendment.

Accordingly, invoking both sources of power, we turn to the precedents under the Thirteenth and Fourteenth Amendments.

3. There is, we submit, no viable obstacle in the past decisions of this Court to the proposition that the Thirteenth and Fourteenth Amendments, taken together, authorize Congress to reach unofficial con-

spiracies directed against the achievement of racial equality in community life. We immediately put to one side decisions dealing with the self-executing scope of the Amendments. If these cases form the great body of the jurisprudence touching the subject, it is only because during most of the intervening century—between 1875 and 1957—Congress made no attempt to enforce the post-Civil War Amendments. But, however numerous and settled, rulings defining the scope of the constitutional provisions *ex proprio vigore* cannot be taken as the measure of congressional power. Whatever doubts once existed, it is now settled that the enforcement clauses of the Thirteenth, Fourteenth and Fifteenth Amendments authorize federal legislation reaching further. *Jones* v. *Mayer Co.*, *supra*, 392 U.S. at 438–444; *Katzenbach* v. *Morgan*, *supra*, 384 U.S. at 648–651; *South Carolina v. Katzenbach*, 383 U.S. 301.

What remains is a handful of old cases, and some quite recent decisions (including those just cited), dealing with legislation implementing the Amendments. The actual result in the older decisions is not inconsistent with our submission that the Thirteenth and Fourteenth Amendments empower Congress to reach group conduct designed to prevent one race of citizens from enjoying civil equality. Thus, *United States* v. *Reese*, *supra*, and *James* v. *Bowman*, 190 U.S. 127, struck down legislation enacted under the Fifteenth Amendment at least partly on the ground that the statutes sought to reach more than race discrimination in the enjoyment of the franchise, the only subject of the Amendment. So, also, the rul-

ing in *United States* v. *Cruikshank, supra,* and *United States* v. *Harris, supra,* was in fact only that an ordinary case of battery, or murder, or a lynching, not motivated by race or class hostility, is beyond the power of Congress to punish. See, also, *United States* v. *Powell,* 212 U.S. 564. And, finally, whatever the present vitality of the *Civil Rights Cases,* 109 U.S. 3, striking down the Public Accommodations Law of 1875 as an unwarranted attempt to legislate with respect to "social rights" by controlling the proprietor "as to the guests he will entertain" (109 U.S. at 22, 24), that holding plainly does not control a case of racial violence aimed at hindering the black community in the enjoyment of all civil rights.

There is, to be sure, some language in *Cruikshank,* in *Harris,* and in the *Civil Rights Cases,* that points in a different direction. Those opinions, in some passages, seem to espouse an all-or-nothing approach: that conceding any national power under the Thirteenth and Fourteenth Amendments to reach unofficial conduct necessarily leaves Congress free to supersede the entire legal code of the States, because no convenient stopping place is apparent. That easy answer has been rejected, however, because it renders almost meaningless the Enforcement Clauses of the Amendments, which were thought to have important scope.

4. No such rule has, in fact, ever been followed under the Thirteenth Amendment. On the contrary, in the two sessions of Congress immediately following

the adoption of the Amendment, three statutes were enacted which plainly reach private action. One was the Civil Rights Act of 1866 (14 Stat. 27), whose first section (now 42 U.S.C. 1981, 1982) was recently construed in *Jones* v. *Mayer Co., supra.* The others are the Anti-Kidnaping Act of May 21, 1866 (14 Stat. 50, now 18 U.S.C. 1583), and the Anti-Peonage Act of March 2, 1867 (14 Stat. 546, now 18 U.S.C. 1581 and 42 U.S.C. 1994). And the Court has consistently recognized the propriety under this Amendment of laws operating directly against individuals acting on their own authority See *Slaughter-House Cases,* 16 Wall. 36, 78, 80; *Civil Rights Cases, supra,* 109 U.S. at 20, 23; *Clyatt* v. *United States,* 197 U.S. 207, 216–218; *Jones* v. *Mayer Co., supra,* 392 U.S. at 438.

The Thirteenth Amendment question is, rather, whether our provision is reasonably related to the objective of achieving meaningful emancipation for the former slave race. And, for this purpose, it is important that our case involves an assault against Negroes, broadly aimed at the black community. For, although the Amendment protects everyone against compulsory servitude (see *Slaughter-House Cases, supra,* 16 Wall. at 69, 72; *Bailey* v. *Alabama,* 219 U.S. 219, 240–242; *Pollock* v. *Williams,* 322 U.S. 4, 17–20), it reasonably authorizes legislation aimed at eradicating the remaining badges and vestiges of slavery only with respect to those who are identifiedly the descendants of slaves, notably our black citizens. As to them, however, the Enforcement Clause of the Amendment permits a wide range of solutions.

It is now settled that the Thirteenth Amendment empowers Congress to take all necessary measures to erase not only legal disabilities but also practical obstacles, imposed by private action, which perpetuate race discriminations in community life, including barriers erected to the Negro's "freedom to go and come at pleasure." *Jones* v. *Mayer Co., supra,* 392 U.S. at 443. And it seems hardly debatable that the kind of deliberate terrorism reflected by this record, obviously calculated to deter the Negro from claiming the full benefit of his emancipation as an ordinary citizen, is within the reach of that corrective power. Whatever the viability of the holding in the *Civil Rights Cases* that securing equal access to places of public accommodation was beyond Congressional authority in the circumstances of that time (see *Jones* v. *Mayer Co., supra,* 392 U.S. at 441, n. 78), it would not be "running the slavery argument into the ground" (109 U.S. at 24) to uphold federal legislation remedying concerted racial assaults as "appropriate" under Section 2 of the Thirteenth Amendment.

5. The question under the Fourteenth Amendment is not wholly different. There is no longer any issue whether Congress is barred from implementing the guarantee of the Equal Protection Clause by legislation that reaches conduct unsanctioned by State authority, merely because Section 1 of the Amendment is, in terms, addressed to the States. Whatever its currency at an earlier date, that view has been repudiated. Judging from the statutes they enacted,[7] no

[7] The Enforcement Act of 1870 contained at least three sections unquestionably embracing private conduct, including what

such restriction was recognized by the members of the contemporary Forty-First and Forty-Second Congresses, many of whom had been among the framers of the Fourteenth Amendment, or the similarly worded Fifteenth Amendment,[8] and must be assumed to have known, and observed, the limitations there announced. It was denied in the earliest federal court decisions construing the Enforcement Act of 1870, some of them by members of this Court sitting on cir-

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is now 18 U.S.C. 241 and two provisions invalidated by this Court partly on that ground. See *United States* v. *Reese*, *supra* (holding unconstitutional § 4 of the Act); *James* v. *Bowman*, *supra* (§ 5). And (assuming the correctness of our construction) the Ku Klux Act of 1871, in its Section 2, likewise reached wholly unofficial action.

[8] Thus, all 15 Senators who had voted in favor of the resolution proposing the Fourteenth Amendment in 1866 and who remained when the Enforcement Act of 1870 came before the Senate voted in favor of that measure (Cong. Globe, 39th Cong., 1st Sess., p. 3042; Cong. Globe, 41st Cong., 2d Sess., p. 3809). Significantly, all seven remaining members of the Joint Committee on Reconstruction who had supported the Report in favor of the Amendment voted for the 1870 Act (*ibid.*). Similarly, 11 of the 12 pro-Fourteenth Amendment Senators remaining voted for the Ku Klux Act of 1871 (Cong. Globe, 42d Cong., 1st Sess., pp. 808, 831). It is also noteworthy that Congressman Bingham, perhaps the chief artisan of the Fourteenth Amendment, endorsed the Ku Klux Act as wholly consistent with its purposes. Cong. Globe, 42d Cong., 1st Sess., App. 81–86.

Equally relevant to the question of the power of Congress to reach private action is the fact that, of the 39 Senators who had supported the Fifteenth Amendment (worded, like the Fourteenth, as a negative injunction addressed to the States), 28 remained and all voted in favor of the 1870 Act, which also purported to enforce that Amendment against wholly private conduct (Cong. Globe, 40th Cong., 3d Sess., p. 1641; Cong. Globe, 41st Cong., 2d Sess., p. 3809).

cuit.[9] It has been contradicted in congressional legislation of the past decade.[10] And, five Terms ago, it was expressly rejected by a majority of this Court. See *United States* v. *Guest, supra,* 383 U.S. at 761–762 (concurring opinion of Mr. Justice Clark, joined by Mr. Justice Black and Mr. Justice Fortas), 774–784 (separate opinion of Mr. Justice Brennan, joined by Mr. Chief Justice Warren and Mr. Justice Douglas). And see, Cox, *Foreword: Constitutional Adjudication and the Promotion of Human Rights,* 80 Harv. L. Rev. 91.

This is not to say, of course, that the power of Congress under Section 5 of the Fourteenth Amendment is wholly unconfined. On the contrary, we assume that the point of addressing the "State" in Section 1 is to indicate that the Amendment is concerned alone with

[9] See, *e.g.*, *United States* v. *Hall*, 26 Fed. Cas. 79 (S.D. Ala. 1871, opinion by Judge Woods, later a Justice of this Court); *United States* v. *Given*, 25 Fed. Cas. 1324 (D. Del. 1873, opinion by Mr. Justice Strong); *United States* v. *Cruikshank*, 1 Woods 308, 25 Fed. Cas. 707 (D. La. 1874, opinion by Mr. Justice Bradley).

[10] See, *e.g.*, 42 U.S.C. 1971(c), as added by § 131 of the Civil Rights Act of 1957, which has been assumed to reach "purely private action designed to deprive citizens of the right to vote on account of their race or color" (*United States* v. *Raines*, *supra*, 362 U.S. at 20); 42 U.S.C. (Supp. V) 1973i(b), being § 11(b) of the Voting Rights Act of 1965, which prohibits voting intimidation by any person "whether acting under color of law or otherwise" (challenge held "premature" in *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 317); 42 U.S.C. (Supp. V) 3604, being § 804 of the Civil Rights Act of 1968, which prohibits private discrimination in the sale or rental of dwellings (noted in *Jones* v. *Mayer Co.*, *supra*, 392 U.S. at 413); 18 U.S.C. (Supp. V) 245(b)(2), being § 101(a) of the Civil Rights Act of 1968, which punishes anyone "whether or not acting acting under color of law" who forcibly interferes with the enjoyment of certain State benefits free of race discrimination.

the "public sector," typically the area of public law, the outer perimeter of which includes only those activities and relationships in which the State is involved. We do not suggest that Congress, exercising its enforcement power, can expand the scope of concern. The only legitimate goal of legislation under the Amendment is to assure that those to whom the State owes "equal protection" and "due process" are not denied the benefit of those guarantees. But, if directed to that end, any "appropriate" means are permissible. See *Katzenbach* v. *Morgan, supra,* 384 U.S. at 650–651; *Ex Parte Virginia,* 100 U.S. 339, 345–346. And this includes measures directed against anyone, State officer or private citizen, whose actions effectively interfere with the realization of the Amendment's objectives.

The present case offers no occasion to consider what federal legislation running against private conduct might be appropriate to enforce the guaranties of the Due Process Clause. It may be that Section 5 of the Fourteenth Amendment does not authorize national laws to protect "life, liberty or property" against wholly private action not motivated by race or class hostility. The reasoning would be that such conduct directed against those "natural rights of man" is an ordinary tort or crime which always has been exclusively State business, and must so continue unless the federal government is to undertake full police duty in all local jurisdictions. See, *e.g., United States* v. *Cruikshank, supra,* 92 U.S. at 551–552, 553–554; *Snowden* v. *Hughes, supra,* 321 U.S. at 11. Of course,

State officers and those acting under their umbrella who deprive citizens of life or liberty without due process are amenable to national laws. *E.g., Screws* v. *United States, supra; Williams* v. *United States,* 341 U.S. 97; *United States* v. *Price, supra.* But ordinary murder, even lynching of a State prisoner without official complicity and unmotivated by race, has been held beyond federal reach. That is the essential holding of *Cruikshank, Harris* and *Powell.*

The same limitations do not apply, however, when Congress seeks to implement the guaranties of the Equal Protection Clause against unofficial conduct, at least with respect to race discrimination. Here, historical realities required, and considerations of federalism did not oppose, a different rule. Thus, repeatedly, the *Cruikshank* opinion stresses the absence of any allegation that the victims were assaulted on account of their race (92 U.S. at 554, 555, 556), and the same point is made in *Harris* (106 U.S. at 637, 641). See, also, *United States* v. *Reese, supra,* 92 U.S. at 218, 220; *James* v. *Bowman, supra,* 190 U.S. at 139, 142. The implication is that Congress might reach unofficial conduct directed against Negroes because of their race—or, perhaps, against any identifiable class of persons because of their membership in it.

This view reflects the fact that, unlike the "natural rights" mentioned in the Due Process Clause, immunity from discrimination on account of race or color was a new constitutional right, created by the post-Civil War Amendments, the enforcement of which, in the existing context, might well call for a national effort. The point of the Equal Protection

Clause, after all, is not to assure a blameless State, but rather, "to secure to all persons the *enjoyment* of perfect equality of civil rights". *Ex Parte Virginia, supra,* 100 U.S. at 346 (emphasis supplied). See, also, *Strauder* v. *West Virginia,* 100 U.S. 303, 310; *Neal* v. *Delaware,* 103 U.S. 370, 386. Cf. *Yick Wo* v. *Hopkins,* 118 U.S. 356, 373–374. And, the practical implementation of the promise of equality, it was recognized from the beginning, would require more than State abstention. Yet, here, conceding federal power to combat private conspiracies offers no serious threat of superseding all local regulation of public affairs.

6. In judging the constitutional "appropriateness" of Section 1985(3) as applied to a case like ours, it is proper to emphasize that the statute does not purport to reach to the boundaries of the Equal Protection Clause, but only regulates the more serious threats to basic equality. While it is enough under Section 5 of the Fourteenth Amendment if one can "perceive a basis" for the conclusion that the means selected would serve to promote equal protection (*Katzenbach* v. *Morgan, supra,* 384 U.S. at 653, 656), such legislation is the more securely anchored in the Constitution when it confines itself to the core problem and deals only with those aspects of it that apparently call for national solutions.

It is significant, first, that we are concerned here with *group conduct.* The isolated act of a single individual does not usually carry the same dangers. As traditional criminal law recognizes by singling out concerted action to punish even the inchoate offense and penalize it more severely, a conspiracy presents a

special threat, if only because of the greater likelihood of success. And so, it is clear that the national government has better cause to intervene here than with respect to individual action. That is especially relevant when considering legislation purporting to implement the Fourteenth Amendment, which primarily speaks to the States. For group action bears some of the same characteristics as governmental action, and it is sometimes beyond the capacity, or the will, of local authorities to inhibit.

The analogy is sufficiently familiar in the case of large-scale combinations wielding power equal to, and sometimes greater than, that of local governments—like the Klan of the post Civil War era or the large corporations and associations of today. Cf. *Terry* v. *Adams,* 345 U.S. 461; *Steele* v. *L. & N. R. Co.,* 323 U.S. 192; *Marsh* v. *Alabama,* 326 U.S. 501; *Food Employees* v. *Logan Plaza,* 391 U.S. 308. And see, *Collins* v. *Hardyman, supra,* 341 U.S. at 662. But the point remains relevant in less extreme circumstances, if only because here, as elsewhere, Congress can reasonably determine that effective suppression of the primary evil, and the practical difficulties of assessing the seriousness of the peril on each occasion, requires it to fashion a wider net to reach all unofficial conspiracies, rather than attempt to draw an unsure line between the large and the small. Cf. *Everard's Breweries* v. *Day,* 265 U.S. 545; *South Carolina* v. *Katzenbach, supra; Jones* v. *Mayer Co., supra.* It is not irrelevant that the statute in suit and 18 U.S.C. 241, two contemporaneous efforts to implement the Fourteenth Amendment in otherwise broad terms, both

limit their reach to group conduct, albeit including all conspiracies of "two or more persons".

We do not claim an unconfined national power to reach all criminal conspiracies. The present suit rests on no such novel proposition. We do assert that congressional authority may be greater when group action is involved. But that is only one aspect of the matter. The more important factor here, in our view, is that the case arises from an assault *on account of race.* That is, of course, what justifies reliance on the Thirteenth Amendment. But the anti-race motivation of the conduct is also relevant to congressional power under the Fourteenth Amendment.

As has been recognized since the *Slaughter-House Cases* in 1872, although only the Fifteenth Amendment explicitly mentions race or color, "any fair and just construction of any section or phrase" of the Fourteenth Amendment also must take into account "the one prevading purpose" behind the adoption of all the post-Civil War Amendments, which is "the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made free man and citizen from the oppressions of those who had formerly exercised unlimited dominion over him." 16 Wall. at 71–72. Thus, one may properly concede greater latitude to Congress when it is legislating to protect those for whose special benefit the Amendment was framed. Indeed, the course of decisions in this Court reflects that approach, attaching relevance to the fact that the claim or the statute invoked was confined to race discrimination (*e.g.*, *Strauder* v. *West Virginia, supra,* 100 U.S. at 306–

307; *Shelley* v. *Kraemer,* 334 U.S. 1, 23; *Bolling* v. *Sharpe,* 347 U.S. 497, 499; *Goss* v. *Board of Education,* 373 U.S. 683, 687–688; *McLaughlin* v. *Florida,* 379 U.S. 184, 191–192), or, on the contrary, was not so limited (*e.g., United States* v. *Reese, supra,* 92 U.S. at 218–221; *United States* v. *Cruikshank, supra,* 92 U.S. at 554–556; *United States* v. *Harris, supra,* 106 U.S. at 639; *James* v. *Bowman, supra,* 190 U.S. at 139–142; *Fay* v. *New York,* 332 U.S. 261, 282–284; *Collins* v. *Hardyman, supra,* 341 U.S. at 661–662).

We submit that the historical purpose of the Fourteenth Amendment to raise up the former slave to equal enjoyment of civil rights is pertinent in assessing the power of Congress to legislate in favor of the Negro. This is where all the post-Civil War Amendments come together. While the Fifteenth Amendment is not a source of power in this instance, it is certainly relevant that, as applied here, our statute draws from both the Thirteenth and Fourteenth Amendments. The two provisions fortify each other and the point where they meet is surely the strongest source.

CONCLUSION

We have said that the case involves not only a cruel beating, but *concerted* violence by a group of persons directed against black citizens *because of their race.* This is radically different from the ordinary crime of battery, or even murder—normally a purely State concern. It is no part of our submission that the post-Civil War Amendments so altered our federal system that Congress was thereafter authorized to make offenses against the Nation all that before had been

crimes or torts under the law of the States. See *Snowden* v. *Hughes, supra,* 321 U.S. at 11. As was said in the *Slaughter-House Cases, supra,* 16 Wall. at 82, "we do not see in those amendments any purpose to destroy the main features of the general system." We have no quarrel with the teaching of *United States* v. *Cruikshank, supra,* 92 U.S. at 556, that "the United States have [not] the power [n]or are required to do mere police duty in the States." Nothing of the kind is involved here.

We suggest only that federal law properly may remedy a fundamental deprivation of that civil equality which the Thirteenth and Fourteenth Amendments enjoined the States to accord and authorized the Congress to enforce. That is the role undertaken by Section 1985(3), which, in our view, embraces the claim stated in the complaint.

Accordingly, we urge reversal of the rulings below and a remand of the case to the district court for trial on the merits.

Respectfully submitted.

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AUGUST 1970.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 144

EUGENE GRIFFIN, ETC., ET AL.,

Petitioners,

v.

LAVON BRECKENRIDGE, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the United States District Court for the Southern District of Mississippi (A. 23-24)[1] is unreported. The opinion of the United States Court of Appeals for the Fifth Circuit (A. 27-44) is reported below at 410 F.2d 817.

JURISDICTION

Petitioners appealed from a judgment of the district court dismissing their complaint (A. 25, 26). The judgment of the court of appeals affirming the dismissal was entered on April 29, 1969 (A. 45). The petition for a writ of certiorari

[1] The Appendix filed May 28, 1970, in this case is cited herein as "A." plus the page reference.

was filed on May 31, 1969, and granted on May 4, 1970. Simultaneous with the grant of the petition, the Court granted petitioners' motion for leave to proceed *in forma pauperis*. (397 U.S. 1074, A. 46). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution:

AMENDMENT XIII

Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2: Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . . .

Section 5: The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Federal Statute:

42 U.S.C. 1985(3)

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

QUESTIONS PRESENTED

Whether 42 U.S.C. 1985(3) reaches a private conspiracy to deprive persons on account of their race of equal protection of the laws and equal privileges and immunities under the laws as those terms are used in that statute.

Whether Congress possessed the power to enact 42 U.S.C. 1985(3) as so construed.

STATEMENT

Within a month after James Meredith was shot on the highway near Hernando, Mississippi, in the course of his "march against fear" from Memphis to Jackson,[2] petitioners–four blacks from Kemper County, Mississippi–were riding on federal, state and local highways visiting friends and doing errands (A. 4-5). R. G. Grady of Memphis, Tennessee, who owned and operated a car presumably bearing out-of-state tags, provided petitioners' transportation (A. 4). Petitioners' travels were abruptly halted by the respondents–Lavon and James Breckenridge, two white adults of Kemper County, Mississippi (A. 4-5). These men mistook the alien, R. G. Grady, for a civil rights worker, and, pursuant to plan, drove a truck into the path of Grady's oncoming car (A. 5). The Breckenridges then forced Grady and his black passengers from the car (A. 5). At least one of the Breckenridges, probably Lavon, held the travelers at bay with firearms; and James Breckenridge, amidst threats of murder, clubbed Grady and each of the petitioners about their heads (A. 5-6).

The Breckenridges perpetrated these acts as part of a conspiracy to prevent petitioners and other Negroes–

> through such force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi, including but not limited to their rights to freedom of speech, movement, association and assembly; their right to petition their government for redress of their grievances; their rights to be secure in their person and their homes; and their rights not to be enslaved nor deprived of life and liberty other than by due process of law. [A. 5]

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[2] *Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on The Judiciary*, 89th Cong., 2d Sess., p. 116 (1966); *Report of The National Advisory Commission on Civil Disorders*, p. 110 (1968).

As a result of this episode petitioners[3] filed the complaint in this case alleging, in principal part, violations of 42 U.S.C. 1985(3) and demanding compensatory and punitive damages. On respondents' motion Federal District Judge Dan M. Russell, Jr., dismissed the complaint citing this Court's decision in *Collins v. Hardyman*, 341 U.S. 651 (1951).[4] The Court of Appeals for the Fifth Circuit, notwithstanding "serious doubts as to . . . [the] continued vitality" (A. 38) of *Collins*, affirmed but noted that "it would not surprise us if *Collins v. Hardyman* were disapproved and if § 1985(3) were held to embrace private conspiracies to interfere with rights of national citizenship" (footnote omitted) (A. 43).

SUMMARY OF ARGUMENT

This case raises the question whether in a damage action brought under Section 2 of the Ku Klux Klan Act of April 20, 1871, 17 Stat. 14, 42 U.S.C. 1985(3), plaintiffs must allege and prove that a conspiracy to deprive them of "equal protection of the laws, or of equal privileges and immunities

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[3]Petitioners Eugene Griffin, Renea Johnson, and Lonnie Chamberlin are minors suing by their next friends. Petitioner Ted Coleman is an adult suing in his own right (A. 4).

[4]Respondents moved to dismiss because petitioners had filed a similar cause of action against them in the Circuit Court of Kemper County (A. 14). The district court did not rely on this in dismissing the complaint, nor did the court of appeals in affirming. That, we submit, is as it should be. This Court has said with respect to 42 U.S.C. 1983 that the "federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." *Monroe v. Pape*, 365 U.S. 167, 183 (1961); *McNeese v. Board of Education*, 373 U.S. 668, 674 (1963). Moreover, lower courts have applied that principle in cases based on Section 1985(3). *Dodd v. Spokane County, Washington*, 393 F.2d 330, 334 (9th Cir. 1968); *Powell v. Workmen's Compensation Board of N.Y.*, 327 F.2d 131, 135 (2d Cir. 1964). See *Scolnik v. Winston*, 219 F. Supp. 836, 839 (S.D.N.Y. 1963), *affirmed on other grounds sub nom. Scolnick v. Hefkowitz*, 329 F.2d 716 (2d Cir. 1964).

under the laws" on account of their race was conducted "under the color of law." In *Collins v. Hardyman*, 341 U.S. 651 (1951), the Court read Section 2 as restricted by Congress to conspiracies carried on "under the color of law," but it did so because any other construction of the dormant Act would have raised grave constitutional questions over congressional power. Since then, decisions of this Court have answered these questions and affirmed the existence of the necessary power. Accordingly, petitioners seek to have the *Collins* decision reexamined and overruled so that Section 2 of the Act may be given its natural coverage.

I

On its face, Section 2 plainly reaches private or unofficial conspiracies. It identifies the subjects of its coverage as "two or more persons in any State." In sharp contrast with Section 1 of the Act, now codified in 42 U.S.C. 1983, Section 2 does not limit its subjects to those who act "under color of any law." Indeed, the statute speaks of those who "go in disguise upon the public highway" rather than those who act in official capacities. As this Court put it, in *United States v. Harris*, 106 U.S. 629, 637 (1883), the section "by its terms" protects against invasions "by private persons."

The legislative history does not evince a congressional purpose requiring that the Ku Klux Klan Act be read in a restrictive fashion. Section 2 of the Act, to be sure, evoked a storm of controversy, but to opponent and proponent alike it was clear that the principal purpose of the Act was to reach private conspiracies based on race, especially the conspiracies of the Klan.

The substantive rights protected from such conspiracies are, in the statute's words, "equal protection of the laws" and "equal privileges and immunities under the laws." The legislative history makes clear that Congress, by these terms, sought to protect rights of national and state citizenship.

Thus, the statute secures the rights respondents conspired to infringe—petitioners' "equal rights, privileges and immunities . . . under the laws of the United States and the State of Mississippi . . . ." (A. 5).

II

In order to avoid difficult constitutional questions, *Collins* construed Section 2 of the Ku Klux Klan Act to require "state action." Recent opinions, however, indicate that Section 5 of the Fourteenth Amendment authorizes Congress to legislate against private action in order to preserve and secure Fourteenth Amendment rights. Thus, in *Katzenbach v. Morgan*, 383 U.S. 641 (1966), the Court held that Congress has the power to create substantive rights under the enforcement provisions of Section 5. In *United States v. Guest*, 383 U.S. 745, 761, 774 (1966), six justices, in concurring opinions, stated that Congress may legislate directly against private conduct in order to secure Fourteenth Amendment rights.

Moreover, the Congress' authority under Section 2 of the Thirteenth Amendment has been more fully fleshed out since the decision in *Collins*. As a result of the decision in *Jones v. Mayer Co.*, 392 U.S. 409 (1968), it is clear that Congress has the power to define and proscribe those activities of private individuals that perpetuate the vestiges of slavery. While the precise limits of this power are as yet unknown, it at least includes the power to protect a man's freedom "'to go and come at pleasure'." *Id.* at 443.

Finally, many of the rights infringed in this case are rights of national citizenship. As to them, Congress derives authority to legislate from sources other than the Thirteenth and Fourteenth Amendments. "Every right, created by, arising under, or dependent upon the Constitution, may be protected and enforced" by Congress. *In re Quarles*, 158 U.S. 532, 535 (1895). And because Congress' power with respect to these rights does not stem from the Fourteenth Amend-

ment, there can be no real question that its legislation can bear directly on private individuals. *United States v. Guest*, 383 U.S. 745, 759-60 n. 17 (1966). See *Twining v. New Jersey*, 211 U.S. 78, 97 (1908).

The burden of our argument, then, is that recent opinions of this Court construing the enabling provisions of the Thirteenth and Fourteenth Amendments indicate that Congress has the power to secure the values guaranteed by those Amendments from private as well as public infringement. Moreover, Congress enjoys similar powers with respect to the rights of national citizenship. In light of this, we submit that there was ample basis for the enactment of Section 1985(3), so that the Act can now be given its natural reading without fear of running afoul of the Constitution.

ARGUMENT

I. SECTION 1985(3) REACHES UNOFFICIAL CONSPIRACIES OF THE NATURE ALLEGED BY PETITIONERS.

A. Introduction

The Court below affirmed the judgment dismissing petitioners' complaint because it believed this Court's decision in *Collins v. Hardyman*, 341 U.S. 651, compelled that result.

In *Collins* three Justices (Burton, Douglas and Black JJ.) construed Section 1985(3) to prohibit private conspiracies, as we do in the case at bar. A majority of the Court, however, focused on the word "equal," and stated that under Section 1985(3) a conspiracy to deprive one of "'equal protection'" or "'equal privilege and immunities'" required "some manipulation of the law or its agencies to give sanction or sanctuary for doing so."[5] 341 U.S. at 661. This

[5]The statute, in part, reads: "If two or more persons in any State or Territory conspire or go in disguise on the highways . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, . . . the party so injured or deprived may have an action for the recovery of damages . . . ." 42 U.S.C. 1985(3).

interpretation, in our view, warrants re-examination, particularly in light of recent decisions of this Court fleshing out congressional authority under the Thirteenth, Fourteenth and Fifteenth Amendments and giving civil rights legislation of the Reconstruction Era its natural coverage.

When this Court decided *Collins* in 1951, civil rights legislation protecting citizens from wrongs perpetrated by individuals raised "constitutional problems of the first magnitude." 341 U.S. at 659. The Court, however, as it thrice stated, 341 U.S. at 655, 661, 662, avoided these constitutional problems with its construction of the statute. But, the statutory construction hardly seems to have been independent of the constitutional issues in the case. As the lower court ventured, "The Court was probably led to this result by its doubts as to the constitutionality of the statute, yet it based its decision not on constitutional grounds, but upon a construction of the language itself" (A. 36).[6]

Furthermore, the Court's reluctance to grapple with the constitutional problems lurking in *Collins*, evidently was compounded by its historical view of the statute. The Court characterized the Act as one that (1) had "long been dormant" and (2) was "among the last of the reconstruction legislation to be based on the 'conquered province' theory. . . ." 341 U.S. at 656.

Since 1951, this Court has answered the difficult problems lurking behind the *Collins* decision. Indeed, as we develop in detail, *infra* pp. 22-27, the Court's opinions now indicate that the Thirteenth, Fourteenth, and Fifteenth Amendments empower Congress to protect the rights incorporated in those Amendments against invasion by States or individuals. Thus, the constitutional impediments that the

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[6] In *Adickes v. Kress & Co.*, 398 U.S. 144, 165 n. 31 (1970), this Court noted that *Collins* effectively read "'under color of law'" into 1985(3) "in order to avoid deciding whether there was congressional power to allow a civil remedy for purely private conspiracies . . . ."

Court skirted in *Collins* no longer exist. The language of the statute can be given its natural meaning and full scope without constitutional impediment.

Furthermore, quiescence is no longer a reason for reading civil rights acts restrictively. *Jones v. Mayer Co.*, 392 U.S. 409, 437 (1968). Recent decisions demonstrate that these statues should be accorded "a sweep as broad as . . . [their] language." *United States v. Price*, 383 U.S. 787, 801 (1966). In according such acts their full coverage the Court now examines the legislative history of the particular provision involved, its companion statutes, and the relevant events transpiring outside of the halls of Congress which put the legislation into proper perspective. *Id.* at 801-05; *Jones v. Mayer Co.*, 392 U.S. at 422-437.

Section 1985(3), when read as its companion statutes have been recently by this Court, does not require state action and therefore, *Collins*, at least in its broader aspects, should no longer be treated as the authoritative construction of the 1871 Act.

B. The Plain Words and Legislative History of Section 1985(3) Demonstrate That the Statute Reaches Unofficial Conspiracies.

Section 1985(3), we submit, prohibits those conspiracies of private individuals which would deny blacks equal protection of the laws and equal privileges and immunities. Before discussing the precise language of Section 1985(3) and its legislative history, however, we sketch briefly the framework of civil rights statutes that Congress had erected prior to enacting Section 1985(3).

At the outset of Reconstruction, Congress passed the Act of April 9, 1866, 14 Stat. 27. Section 1 of that Act gave Negroes the same rights as whites with respect to transferring and receiving real and personal property. Section 2 declared that it was criminal for anyone acting "under the color of any law . . . or custom" to deprive any person of

the rights secured by Section 1. Next, Congress enacted the "Enforcement Act" of May 31, 1870, 16 Stat. 140. Section 6 of this act levied criminal penalties against conspiracies "by two or more persons" to interfere with the exercise or enjoyment of "any right or privilege secured . . . by the Constitution." Then, by the Act of April 28, 1871—the "Ku Klux Klan Act"—Congress reinforced its 1870 legislation with remedial provisions for damages in civil actions and still other provisions proscribing conspiracies. 17 Stat. 13. Section 1 of the Ku Klux Klan Act permitted civil actions for damages against persons who "under the color of any law" deprive one of his statutory or constitutional rights. Section 2 meted out civil and criminal remedies against conspiracies "by two or more persons" to interfere with the enjoyment of one's right to equal protection of the laws and equal privileges and immunities under the law. The civil damage provisions of Section 2 of the Ku Klux Klan Act, now Section 1985(3) of Title 42, provide the basis for the petitioners' suit in the case at bar.

1. *The Plain Meaning of the Act.* Section 1985(3), by its plain terms, reaches private or unofficial conspiracies to deprive one of his rights to "the equal protection of the laws, or of equal privileges and immunities under the laws . . . ." This section begins with the words, "If two or more persons in any State or Territory conspire . . . ." Congress did not say that one or more of the conspirators must be a government agent or in league with a government agent in depriving one of equal protection or equal privileges and immunities. That situation, indeed, is recognized as a discreet conspiracy and especially covered in Section 1985(3) by independent disjunctive language—"If two or more persons in any State or Territory conspire [for various purposes] . . . *or* for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . ." damages will lie (emphasis added). Thus, while conspiracies involving state authorities are contemplated by this very

provision, such conspiracies are only one of many types reached by the statute.

Furthermore, the statute, taken in its entirety, reveals that conspiracies under Section 1985(3) are not limited to arrangements involving public officials. As with two earlier civil rights statutes,[7] Section 1 of the 1871 Act clearly limits its reach to state action by subjecting to civil liability "any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State" shall deprive another of his rights, privileges or immunities. This limitation, quite simply, just does not appear in Section 2 of the Act which is now 42 U.S.C. 1985(3).

The Act, moreover, applies to those who "conspire or go in disguise on the highway or on the premises of another. . . ." Of these words Justice Frankfurter said, "if language is to carry any meaning at all it must be clear that the principal purpose . . . was to reach private action rather than officers of a State acting under its authority. Men who 'go in disguise upon the public highway, or upon the premises of another' are not likely to be acting in official capacities." *United States v. Williams*, 341 U.S. 70, 76 (1951) (opinion of Frankfurter, J.).

Finally, in 1883, when the Court had before it a criminal prosecution under Section 2 of the Ku Klux Klan Act, it said that this section (then Section 5519 of the Revised Statutes)[8] "as appears *by its terms*, was framed to protect from invasion by private persons, the equal privileges and immunities under the laws, of all persons and classes of persons." *United States v. Harris*, 106 U.S. 629, 637 (1883) (emphasis added). This, we submit, is the natural reading of Section 1985(3).

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[7] Act of April 9, 1866, 14 Stat. 27, § 2; Act of May 31, 1870, 16 Stat. 140, 144, § 17.

[8] In *Collins*, 341 U.S. at 657, the Court stated that the "provision establishing criminal conspiracies [is] in language indistinguishable from that used to describe civil conspiracies . . ." now in Section 1985(3).

2. *The Legislative History of the Act.* The legislative history of Section 1985(3) confirms the fact that the statute "means what it says." *Jones v. Mayer Co., supra*, 392 U.S. at 421-22. The court of appeals, in fact, stated that "[e]very indication in the legislative history of the period suggests that the Congressional reconstructionists intended to make the streets and highways safe for the lately freed from *private* as well as from public traducers" (A. 39-40) (emphasis added).

This statute was designed to curb the actions of private "armed bands of assassins," particulary the Ku Klux Klan. Cong. Globe, 42d Cong., 1st Sess., App. 73 (Rep. Blair); see also *id.* at App. 78 (Rep. Perry: "gangs of assassins"). The depredations of this group were rehearsed at great length in the debates as congressmen and senators spelled out a tale of what they viewed as a "pre-concerted and effective plan by which thousands of men are deprived of the equal protection of the laws." *Id.* at 459 (Rep. Coburn). See also, *e.g., id.* at 321-22 (Rep. Stoughton); 412-13 (Rep. Roberts); 154-57 (Sen. Sherman); App. 100-10 (Sen. Pool). The Klan was depicted as interfering, by violence and threats of violence, with the exercise by Negroes of the civil rights granted and protected by the recent Amendments to the Constitution and the federal statutes designed to enforce those guarantees.

All the legislators understood that the statute they were enacting would have to provide remedies against the concerted, private action of the Klan with which the States were either disinclined or unable to cope. Representative Shellabarger's speech introducing the measure, *id.* at App. 67-71, made it clear that as initially conceived the bill was designed to remedy denials of constitutional and legal rights by direct federal sanctions against the perpetrators of offenses. Moreover, throughout the legislative consideration of the bill and amendments to it, this understanding remained and was

made express by opponent and proponents alike.[9] For example, Representative Shanks of Indiana declared (*id.* at App. 141):

> I do not want to see it so amended that there shall be taken out of it the frank assertion of the power of the national Government to protect life, liberty, and property, irrespective of the act of the State.

The Court in *Collins* did not deal with the legislative history other than to concede that this Act was fashioned against the Ku Klux Klan (341 U.S. at 662). Moreover, in focusing on the word "equal" in the phrases "equal protection" and "equal privileges and immunities" to read a requirement of state action into the law (341 U.S. at 661, 662), it construed the Act in a manner that at best is unsupported by legislative history and more likely is contrary to the legislative history.

As originally introduced, the proposed statute did not speak in terms of "equal" protection or "equal" privileges and immunities, but rather protected persons against acts in "violation of the rights, privileges, or immunities of any person to which he is entitled under the Constitution and laws of the United States." Cong. Globe, 42d Cong., 1st Sess. 317. Three conflicting points of view as to the proper scope of the statute developed in response to the bill. The first group favored the proscription of all conspiracies which infringed those rights of federal citizenship arising out of the relationship between the citizen and the federal government. *Id.* at 382-83 (Rep. Hawley); 382, 478, App. 69 (Rep. Shella-

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[9]See, *e.g.*, the statements of those in favor of the measure: Cong. Globe, 42 Cong., 1st Sess., App. 81-86 (Rep. Bingham), 476 (Rep. Dawes), 481-82 (Rep. Wilson), 485 (Rep. Cook), App. 251 (Sen. Morton), 501-02 (Sen. Frelinghuysen), and 691-92, 696-97 (Sen. Edmunds). The opponents of the measure, who saw in it a federal criminal code which would supplant state jurisdiction, *infra*, n. 10, had no doubt that the bill reached the actions of private conspirators: *e.g.*, *id.* at App. 48 (Rep. Kerr), App. 208-10 (Rep. Blair), 429, 431 (Rep. McHenry), App. 218 (Sen. Thurman).

barger); 475-76 (Rep. Dawes); App. 83-85 (Rep. Bingham). The second suggested that Congress should legislate directly against individual deprivation of Fourteenth Amendment rights when widespread lawlessness rendered the state helpless to insure an even-handed enforcement of its own laws. *Id.* 485-86 (Rep. Cook); 607-08 (Sen. Pool). The third group urged that the Fourteenth Amendment authorized Congress to enact statutes regulating private conduct without regard to first determining that a significant breakdown in state law enforcement had occurred. *Id.* 334 (Rep. Hoar); 487 (Rep. Tyner).

The leadership, under the direction of Representative Shellabarger, introduced the amendment which brought the word "equal" into the statute and also provided the civil damage remedy. This was done in hopes of accommodating those who insisted on a measure designed to protect national citizenship and Fourteenth Amendment rights while placating the fears of some Republicans and Democrats that the measure might usurp the states' general police power and interpose a federal criminal jurisdiction over crimes by individuals against the general rights, privileges and immunities of others.[10]

That the addition of the word "equal" was not intended to import a state action limitation is made clear by the statement of Representative Poland, an earlier critic, who, in endorsing the amendment, stated (Cong. Globe, 42d Cong., 1st Sess. 514; emphasis supplied):

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[10]See *e.g.*, Cong. Globe, 42d Cong., 1st Sess. 371-74 (Rep. Archer); App. 110-13 (Rep. Moore); App. 113 (Rep. Farnsworth); App. 134-39 (Rep. McCormick); App. 149-50 (Rep. Garfield); 75-78 (Sen. Trumbull).

> . . . I do agree . . . if a State make proper laws and have proper officers to enforce those laws, and *somebody* undertakes to step in and clog justice by preventing the State authorities from carrying out this constitutional provision [the Fourteenth Amendment], then I do claim that we have the right to make such interference an offense against the United States; *that the Constitution does empower us to aid in carrying out this injunction*, which, by the Constitution, we have laid upon the States, that they shall afford the equal protection of the laws to all their citizens. *When the State has provided the law, and has provided the officer to carry out the law, then we have the right to say that anybody who undertakes to interfere and prevent the execution of that State law is amenable to this provision of the Constitution, and to the law that we may make under it declaring it to be an offense against the United States.*

Furthermore, when the bill reached the Senate in its amended form, Senator Pool, (who had authored Section 6 of the 1870 Enforcement Act, now 18 U.S.C. 241, which does not require state action) stated in support of the bill (Cong. Globe at 608):

> . . . Congress must deal with individuals, not states. It must punish the offender against the rights of the citizen; for in no other way can protection of the laws be secured and its denial prevented.

And, as the Court noted in *Adickes v. S. H. Kress & Co.*, 398 U.S. at 165, Senator Thurman, one of the leaders of the opposition, claimed that Section 2 of the Act, unlike Section 1 which required state action, was unconstitutional because it penalized private conspiracies.

Except perhaps for the views of Representative Shellabarger, the most influential statement of position, and the one for that matter which probably embodied the congressional intent concerning the statute as finally passed, was that of Representative, later President, Garfield. While Garfield

denied the existence of congressional power to "legislate directly" for the protection of persons within the States, Cong. Globe, 42d Cong., 1st Sess., App. 151, he acknowledged that Congress had the power to enforce the protections of Section 1 of the Fourteenth Amendment under the fifth section by making it an offense against the United States for any person, whether official or private, to invade the rights of citizens or by threats of violence, or intimidation, to deprive him of his rights. Thus, the enforcement of equal protection, as well as of the general peace of the community, was left to state authorities. However, when such authorities, either directly, or indirectly by a failure to act against those who would interfere with an individual's exercise of his constitutional rights, deny equal protection, "Congress was empowered to step in and provide for doing justice to those persons who are thus denied equal protection." *Id.* It was Garfield's view that the Fourteenth Amendment compelled the States to open their facilities to all on an equal basis. The States could not affirmatively act to foreclose the use of such facilities by Negroes. Beyond that, moreover, the States had a duty to insure that in fact their facilities were open to all on an equal footing even if this required the States to act against those individuals who would seek to keep the black man out. In the face of a failure of a State to afford such affirmative protection, Congress, in Garfield's view, was empowered to legislate directly against the individuals whom the State failed to punish. *Id.* [11]

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[11] These same concerns continue even now to motivate federal action. In 1968 Congress strengthened the criminal protections for civil rights by enacting 18 U.S.C. 245. That statute applies to individual and conspiratorial actions, and it applies "whether or not" the actions are "under color of law." In support of this legislation, Attorney General Katzenbach testified that "What is equally-critically-necessary is to deal decisively with segregation enforced by lawlessness." Murders, bombings, and the like go "far beyond individual victims," for such acts generate "widespread intimidation and fear-fear of attending desegregated schools, using places of public accommodation, voting, and other activities. . . ." Nevertheless, "in some places . . . local officials either have been unable or unwilling to prosecute crimes of

Garfield announced his opposition to the original Shellabarger proposal for Section 2 of the statute but said he would give his "hearty" support to a redraft which incorporated his views. *Id.* The Garfield theory of the Fourteenth Amendment and the power it bestows upon Congress found widespread support in the debates[12] and seems to have influenced the final shape of the statute. When the statute was amended and passed, Garfield expressed his support and voted for the bill.

To summarize, in our view the legislative history manifests a positive congressional purpose to proscribe private conspiracies. But, we need not go so far. It is enough to say that the legislative history does not evince such a pervasive purpose to the contrary that the statute must be construed in a manner at odds with its plain meaning.

C. Section 1985(3) Protects Rights of National and State Citizenship

In the case at bar petitioners have alleged that the Breckinridges conspired to deny them "equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi." See Statement, *supra*, p. 4. In this section of our brief, we demonstrate that Section 1985(3) protects such rights. In later sections, we shall demonstrate that Congress has the constitutional authority to enact legislation that protects both types of rights from private racial conspiracies.

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racial violence or to obtain convictions in such cases even where the facts seemed to warrant conviction." *Hearings Before the Subcommittee On Constitutional Rights of the Senate Committee on the Judiciary*, 89th Cong., 2d Sess. 88-90 (1966).

[12]See, *e.g.* Cong. Globe, 42d Cong., 1st Sess., 333-34 (Rep. Hoar); App. 85 (Rep. Bingham), 368 (Rep. Sheldon), 375 (Rep. Lowe), 448 (Rep. Butler), 459 (Rep. Coburn), App. 182 (Rep. Mercur), App. 251 (Sen. Morton), 501 (Sen. Frelinghuysen), 506 (Sen. Pratt), App. 229 (Sen. Boreman).

The original draft of the bill that became Section 2 of the Ku Klux Klan Act, secured the "rights, privileges, or immunities of any person, to which he is entitled under the Constitution and laws of the United States." Cong. Globe 42d Cong., 1st Sess. 317 (1871). The Act that emerged from Congress, however, was, at least in a literal sense, broader than the original bill. The Act no longer contained words limiting the rights to those under the "Constitution and laws of the United States." The final Act secured "equal protection of the laws, or of equal privileges and immunities under the laws."

In changing the original bill Congress took as its text the Fourteenth Amendment which guarantees "equal protection" with respect to rights granted by the federal or the state government. Furthermore, in borrowing from the Fourteenth Amendment the phrase "privilege or immunities" Congress omitted the phrase "of citizens of the United States."[13]

Moreover, the explanation of this change in the original bill, as given by the floor leader, confirms the view that the Act secures equality of state and federal rights. In introducing the "equal protection" amendment to the bill, Representative Shellabarger stated that it was not intended to be a limitation on that part of the original bill which was "independent of the 14th amendment, referable to and clearly sustainable by the old provisions of the Constitution . . . ." Cong. Globe 42d Cong., 1st Sess. 478. Rather, the amendment was intended to resolve the "disputed grounds"—*i.e.*, the extent to which Congress could act under the Fourteenth Amendment. In this regard, then, the amendment confined the reach of the law to "deprivations which attack the equality of rights of American citizens," *id.*, but it did not restrict the Act to rights granted only by the federal

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[13]The distinction between privileges and immunities arising from federal law and those arising from state law was not crystallized until after this Act was passed. *Slaughter-House Cases*, 16 Wall. 36 (1872).

government or those granted only by the state government. Note, *Federal Civil Action Against Private Individuals For Crimes Involving Civil Rights*, 74 Yale L.J. 1462, 1469 (1965).

Finally, judicial construction of the Act indicates that it covers the rights of national citizenship as well as rights of state citizenship. In *Collins*, 341 U.S. at 659, the Court alluded to the fact that a constitutional decision in that case would raise issues as to the "content of rights derived from national as distinguished from state citizenship . . . ."[14] The dissenters in that case said that the right allegedly infringed was a First Amendment right and Congress, in Section 1985(3), had exercised its power to protect that national right. 341 U.S. at 663-64. So, too, the court below stated that it could not "discern why 'privileges and immunities under the laws' do not include privileges and immunities of national citizenship." (A. 40).[15]

In short, sound basis exists for reading Section 1985(3) to protect the rights of national as well as state citizenship.

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[14]At the time this Act was before Congress, there was no consenus as to what rights were included in the rights of national citizenship. But one thing must have been clear—that the rights of national citizenship included the right to travel in interstate commerce, for the Supreme Court had so held four years before Section 1985(3) was passed. *Crandall v. Nevada*, 6 Wall. 35 (1867).

[15]In *United States v. Price*, 383 U.S. 787, 800-01 (1966), the Court said with respect to Section 1 of the Ku Klux Klan Act, that "Congress put forth all its powers . . . . [T]his section dealt with Federal rights and with all Federal rights, and protected them in the lump. . . ."; quoting *United States v. Mosley*, 238 U.S. 383, 387-88 (1915). The court below suggested that the legislative history of 18 U.S.C. 241, which was at issue in *Price*, is equally applicable to Section 1985(3). (A. 40)

II. CONGRESS IS EMPOWERED BY THE CONSTITUTION TO ENACT LEGISLATION PROVIDING DAMAGES TO PERSONS INJURED BY PRIVATE CONSPIRACIES TO DEPRIVE THEM OF EQUAL RIGHTS ON ACCOUNT OF RACE.

Having shown that Section 1985(3) reaches unofficial conspiracies to deprive persons of equal rights, privileges or immunities on account of race, we now consider whether this statute, as so interpreted, falls within the powers given the Congress by the Constitution. We urge that Congress possessed authority under the Thirteenth and Fourteenth Amendments to enact Section 1985(3) in its entirety and that, exclusive of the powers granted in these two Amendments, the recognized authority of the Congress to act to protect the rights of national citizenship affords a foundation for sustaining those parts of Section 1985(3) which are directed toward this objective.

Our submission in this case is limited to the type of group action—racial discrimination—which was quite clearly at the heart of the concerns leading to the adoption of the Thirteenth and Fourteenth Amendments.[16] We do not address the question whether Congress possesses power to reach individual or group actions aimed at depriving persons of their rights under law for reasons other than race. That is neither raised by the facts of this case, nor by the statute which has as its purpose "to put the lately freed Negro on an equal footing before the law with his former master." *Collins v. Hardyman*, 341 U.S. at 661.

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[16] *Collins*, on the other hand, "dealt not with racial discrimination . . . but merely a 'lawless political brawl.'" *Terry v. Adams*, 345 U.S. 461 (1953) (Clark, J., concurring).

A. The Powers Given Congress To Enforce the Thirteenth and Fourteenth Amendments Are an Ample Source of Authority for the Enactment of Section 1985(3).

1. *Congress is authorized by Section 5 of the Fourteenth Amendment to protect the exercise of rights secured by the Equal Protection Clause against deprivations by private conspiracies.*

In this section of our brief, we review the recent opinions of this Court which define the permissible limits of the powers given to Congress by the enabling section of the Fourteenth Amendment[17] to give effect to the great purpose of this Amendment. We show that recent decisions of this Court make it clear that Section 5 of the Fourteenth Amendment authorizes Congress to pass laws establishing substantive rights in furtherance of the Fourteenth Amendment. Moreover, six justices of this Court in concurring opinions have indicated that the power of Congress to pass substantive laws under Section 5 of the Amendment includes the power to reach conspiracies that do not involve state action. On the basis of this, we submit that Congress was duly authorized by Section 5 of the Fourteenth Amendment to enact Section 1985(3).

This Court has now made it clear beyond peradventure that the enforcement clause of the Fourteenth Amendment permits Congress to go beyond the language in the substantive sections of that Amendment in order to protect minority groups in the enjoyment of their Fourteenth Amendment rights. In *Katzenbach v. Morgan*, 384 U.S. 641, 650 (1966), this Court said:

> By including § 5 the draftsmen sought to grant to Congress, by a specific provision applicable to the

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[17] Section 5 of the Fourteenth Amendment provides that "Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

> Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18 . . . . The classic formulation of the reach of those powers was established by Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat 316, 421: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

The Court concluded its study of Section 5 by holding that "[c]orrectly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment." *Id.* at 651. See also *South Carolina v. Katzenbach*, 383 U.S. 301 (1966) (expressing in the same broad terms the scope of Section 2 of the Fifteenth Amendment); *Jones v. Mayer Co.*, 392 U.S. 409 (1968) (same as to Section 2 of the Thirteenth Amendment); *Everard's Breweries v. Day*, 265 U.S. 545, 558-59 (1924) (same as to Section 2 of the Eighteenth Amendment).

The holding of *Katzenbach v. Morgan* was foreshadowed by the opinions delivered three months earlier in *United States v. Guest*, 383 U.S. 745, 762, 781-84 (1966). While the opinion of the Court in *Guest* did not reach the question, 383 U.S. at 755, six justices in concurring opinions declared that Section 5 of the Fourteenth Amendment authorizes Congress to punish private conspiracies that interfere with Fourteenth Amendment rights. Mr. Justice Clark, speaking for Justices Black and Fortas as well, stated (*id.* at 762):

> [I]t is . . .both appropriate and necessary under the circumstances here to say that there can now be no doubt that the specific language of § 5 empowers the Congress to enact laws punishing all conspiracies—with or without state action—that interfere with Fourteenth Amendment rights.

In a second opinion, Mr. Justice Brennan, with whom Chief Justice Warren and Justice Douglas concurred, reached a similar conclusion, saying (*id.* at 781-82):

> My view as to the scope of §241 requires that I reach the question of constitutional power—whether §241 or legislation indubitably designed to punish entirely private conspiracies to interfere with the exercise of Fourteenth Amendment rights constitutes a permissible exercise of the power granted to Congress by §5 of the Fourteenth Amendment "to enforce, by appropriate legislation, the provisions of" the Amendment.
>
> A majority of the members of the court expresses the view today that §5 empowers Congress to enact laws punishing *all* conspiracies to interfere with the exercise of Fourteenth Amendment rights, whether or not state officers or others acting under the color of state laws are implicated in the conspiracy. Although the Fourteenth Amendment itself, according to established doctrine, speaks to the State or to those acting under the color of its authority, legislation protecting rights created by that Amendment, such as the right to equal utilization of state facilities, need not be confined to punishing conspiracies in which state officers participate. Rather, §5 authorizes Congress to make laws that it concludes are reasonably necessary to protect a right created by and arising under that Amendment; and Congress is thus fully empowered to determine that punishment of private conspiracies interfering with the exercise of such a right is necessary to its full protection. [Footnote omitted.]

Justice Brennan then concluded by stating (*id.* at 784):

> Viewed in its proper perspective, §5 of the Fourteenth Amendment appears as a positive grant of legislative power, authorizing Congress to exercise its discretion in fashioning remedies to achieve civil and political equality for all citizens. . . . And I can find no principle of federalism nor word of the Constitu-

> tion that denies Congress power to determine that in order adequately to protect the right to equal utilization of state facilities, it is also appropriate to punish other individuals—not state officers themselves and not acting in concert with state officers—who engage in the same brutal conduct for the same misguided purpose. [Footnote omitted.]

Katzenbach v. Morgan and the concurring opinions in *United States v. Guest*, then, recognize the power of Congress under the Fourteenth Amendment to enact whatever substantive measures it deems necessary and appropriate to enforce the equal protection guarantee. Furthermore, they indicate that such statutes can properly be drawn to reach private conspiracies which seek, for discriminatory reasons, to deprive persons of the equal use of state facilities.[18]

Finally, there can be no doubt that 1985(3) is appropriate legislation. *Katzenbach v. Morgan*, 384 U.S. 641, 650. See *South Carolina v. Katzenbach*, 383 U.S. 301, 326. The statute, indeed, was drawn in substantially the same words as the Fourteenth Amendment, and Congress described it as "An Act to Enforce the Provisions of the Fourteenth Amendment . . . and for Other Purposes." 17 Stat. 13.

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[18]In this brief we do not restate the arguments that evidently persuaded at least a majority of the Court in *Guest*. Those arguments are found at pages 18-52 of the Government's brief in *Guest*. No. 65, O.T. 1965.

2. *Section 2 of the Thirteenth Amendment authorizes legislation reaching acts done in furtherance of private conspiracies which impose and perpetuate the badges or incidents of slavery.*

A further source of Congressional authority to enact Section 1985(3) may be found in Section 2 of the Thirteenth Amendment.[19] That section of the Amendment, as we show below, authorizes Congress to define and proscribe those activities of private individuals which perpetuate the vestiges of slavery, including deprivations of equal protection of the laws and equal privileges and immunities.

There can be no doubt that Congress, under Section 2 of the Thirteenth Amendment, can reach private conduct if the legislation is otherwise appropriate to securing the interests protected by the Thirteenth Amendment. In *Jones v. Mayer Co.*, 392 U.S. at 438, this Court again made that point:

> It has never been doubted, therefore, "that the power vested in Congress to enforce the article by appropriate legislation" . . . includes the power to enact laws "direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not." [Citing *Civil Rights Cases*, 109 U.S. 3, 20, 23.]
>
> Thus, the fact that § 1982 operates upon the unofficial acts of private individuals, whether or not sanctioned by state law, presents no constitutional problem.

The question of using Section 2 of the Thirteenth Amendment to sustain Section 1985(3), then, narrows to whether that statute is appropriate to the purposes of the Thirteenth

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[19]Section 2 of the Thirteenth Amendment provides that "Congress shall have power to enforce this article by appropriate legislation."

Although this Court's decision in *Jones v. Mayer Co.*, 392 U.S. 409, was entered while this case was pending in the court of appeals, that court acknowledged but did not pass upon the issue of whether Section 2 of the Thirteenth Amendment empowered Congress to enact Section 1985(3). (A. 34 n. 14)

Amendment. In this connection the Court declared in *Jones* that "Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." *Id.*, 392 U.S. at 440. Under the enforcing clause of the Thirteenth Amendment, Congress was empowered to do "much more" than abolish slavery and "establish universal freedom." *Id.* at 439. It could, for example, guarantee the promise of freedom to black people to "'go and come at pleasure'" and the freedome "to buy whatever a white man can buy, [and] the right to live whereever a white man can live." *Id.* at 443.

We submit that if Congress could secure "at least this much" for the Negro under the Thirteenth Amendment, it could readily legislate against conspiracies having as their object the denial of equal protection of the laws and equal privileges and immunities of the former slaves because of their race. This Court in *United States v. Harris*, 106 U.S. 629 (1883), recognized as much. The Court, to be sure, ruled that the Thirteenth Amendment did not sanction the criminal portion of Section 2 of the Ku Klux Klan Act, but that ruling rested on the tenuous ground that this part of the statute was too broad because it went beyond freeing Negroes and reached whites as well. It is true that 42 U.S.C. 1985(3) (the civil part of Section 2 of the Act) does not, by its terms, speak only to Negores, but, for that matter, neither does the Thirteenth Amendment. Whether or not the Act or the Amendment apply to people of other races, the fact remains that both of these instruments had as their purpose the securing of freedom for black people. As the Court put it in *Collins*, Section 1985(3) was intended "to put the lately freed Negro on an equal footing before the law with his former master." 341 U.S. at 661. Section 1985(3), then, is cast no more broadly than the Thirteenth Amendment, and its purpose is at one with that Amendment.

B. THE POWER OF CONGRESS TO PROTECT RIGHTS OF NATIONAL CITIZENSHIP IS AN ALTERNATIVE SOURCE OF AUTHORITY FOR SECTION 1985(3).

There is yet a third source for Congress' constitutional authority to enact Section 1985(3). As the court below put it, some of the constitutional rights asserted by petitioner under Section 1985(3) "are 'fundamental to the concept of our Federal Union' . . . [quoting *Guest*] and implicit in our form of republican government. It is well established that Congress has the power to legislate for their protection even against interference by private conduct" (A. 35-36). Thus, the court below indicated that the statute, as we construe it, is constitutional (A. 36).

We have urged above (*supra*, pp. 18-20) that Section 1985(3) was intended to and does afford protection for the exercise of rights enjoyed as a result of national citizenship. We have also concluded that, although no distinction was made at the time Section 1985(3) was enacted between the rights of national citizenship and the rights enjoyed as a result of state citizenship, the words of the statute protecting "privileges and immunities under the laws" are ample to protect the former.

The constitutional principle is now well established that rights of citizens arising out of their relationship with the federal government may be protected by federal statutes applying directly to private individuals. In the case of *In re Quarles*, 158 U.S. 532, 535, (1895), this Court made it clear that "[e]very right, created by, arising under, or dependent upon the Constitution, may be protected and enforced" as Congress deems proper. The catalogue of such rights was set forth by this Court in *Twining v. New Jersey*, 211 U.S. 78, 97 (1908):

> Thus among the rights and privileges of national citizenship recognized by this court are the right to pass freely from State to State, *Crandall v. Nevada*, 6 Wall. 35; the right to petition Congress for a re-

> dress of grievances, *United States v. Cruikshank, supra* [92 U.S. 542]; the right to vote for National officers, *Ex parte Yarbrough*, 110 U.S. 651; *Wiley v. Sinkler*, 179 U.S. 58; the right to enter the public lands, *United States v. Waddell*, 112 U.S. 76; the right to be protected against violence while in the lawful custody of a United States marshal, *Logan v. United States*, 144 U.S. 263; and the right to inform the United States authorities of violation of its laws, *In re Quarles*, 158 U.S. 532.

And, as the Court noted in *Twining*, the development of this catalogue of rights came about via the prosecution under federal laws of "individuals for conspiracies to deprive persons of rights secured by the Constitution of the United States . . . ." 211 U.S. at 98.

The racial conspiracy described in petitioners' complaint was allegedly aimed at deprivation of a number of the rights catalogued in *Twining*. The facts described in the complaint insofar as they reflect on rights of national citizenship, however, especially show a conspiracy to deprive petitioners of the right to travel and its correlative, the right to use highway facilities. The cases indicate that the latter, as well as the former, is a right of national citizenship within the power of Congress to protect. In *United States v. Guest*, 383 U.S. at 759-60 n. 17, the Court noted that the "right to interstate travel is a right that the Constitution itself guarantees" and that right is "quite independent of the Fourteenth Amendment." In another passage the Court also suggested that right would encompass travel within the State insofar as it involved the "use of streets or highways in interstate commerce." 383 U.S. at 757, n. 13. Similarly, in *United States v. Williams*, the right to use the highways and other instrumentalities of interstate commerce was recognized as a right "arising from the substantive powers of the Federal Government"—under the Commerce Clause—"which Congress can beyond doubt constitutionally secure against interference by private individuals." 341 U.S. 70, 73, 77 (1951) (Opinion of Frankfurter, J.).

Furthermore, there is nothing in *Collins* that indicates that Section 1985(3), as applied to unofficial conspiracies to invade rights of national citizenship, would be beyond the power of the Congress under the Constitution. 341 U.S. at 662. Rather, the Court held only, as a matter of statutory construction, that the Act was not intended to apply to unofficial conspiracies. That conclusion, which we maintain was erroneous, *supra*, pp. 10-18, certainly does not stand in the way of a ruling that Section 1985(3), as applied to unofficial conspiracies, is within the constitutional authority of Congress to protect rights of national citizenship.

A word should be said here regarding the somewhat remote problem of separability of state and federal rights protected by Section 1985(3). If this Court finds that the Thirteenth and Fourteenth Amendments did not grant Congress the power to enact Section 1985(3) and if the Court further finds that Section 1985(3) protects rights of both state and national citizenship, then the question arises whether the Court may hold the statute or a portion of it constitutional insofar as rights of national citizenship are concerned.

In *Collins v. Hardyman*, 341 U.S. at 659, the Court adverted to the question of separability of the Act in its application to rights derived from national as distinguished from state citizenship, and noted that it had been decided "adversely to the plaintiffs in *Baldwin v. Franks*, 120 U.S. 678," with respect to the criminal portion of Section 2 of the 1871 Act, R.S. § 5519. The dissenters in *Collins*, however, found no bar to their position on this basis, and the court of appeals in that case, after giving the issue some consideration, 183 F.2d at 314, concluded that the statute could be limited to protecting only rights of federal citizenship. Such a reading of the statute, to save its constitutionality, would be similar to the reading given to 18 U.S.C. 241, by Mr. Justice Frankfurter in *United States v. Williams*, 341 U.S. 70 (1951).

Such a reading of the statute to encompass only federal rights would at least in part perpetuate the purposes of Congress (see pp. 18-20, *supra*). In the terms of *United States v. Jackson*, 390 U.S. 570, 585 (1968), and its antecedent, *Champlin Rfg. Co. v. Commission*, 286 U.S. 210, 235 (1932), "'it is evident that the legislature would . . . have enacted those provisions within its power, independently of that which'" is the invalid part. Accordingly, the Court should not "defeat the law as a whole." *United States v. Jackson*, 390 U.S. at 585.

To summarize, the enabling clauses of the Thirteenth and Fourteenth Amendments, as now interpretered, permit Congress to deal with private group actions on account of race aimed at depriving black persons of rights secured by the Thirteenth and Fourteenth Amendments. Likewise, Congress' power to protect the rights of national citizenship affords the authority to uphold Section 1985(3) insofar as it protects such rights from racially-based conspiracies. Thus, there is ample authority underpinning Section 1985(3), as we construe it.

CONCLUSION

For the foregoing reasons judgment of the court below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

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EUGENE GRIFFIN, etc., ET AL.,

Petitioners,

v.

LAVON BRECKENRIDGE, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

STATUTE INVOLVED

The full text of 42 U.S.C. 1985(3) is as follows:

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly, or indirectly, any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory

from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

ISSUE PRESENTED

The only issue presented in this case is whether or not the lower court erred in dismissing the claim for relief by Appellants under 42 U.S.C. 1985(3) for the reason that the claim for relief did not state a cause of action under Section 1985(3) Title 42 U.S.C. in that the allegations of said claim did not charge that the alleged conspiracy and the alleged damages were committed under color of law.

ARGUMENT

The complaint filed by the Appellants in this cause was attempted to be instituted under and by virtue of the provisions of 42 U.S.C. 1985(3), but said complaint wholly failed to allege that the cause of action alleged to have been committed by the Appellees was done under color of law.

In the case of *Swift, et al., v. The Fourth National Bank of Columbus, Georgia, et al.*, 205 Fed. Supp. 563, it was held as follows:

> "Section 1985 is aimed at conspiracy, but only when the object of conspiracy is the deprivation of equality before the law—the equal protection of the law—and does not cover conspiracy to deprive a person of his property without due process. Also, this section 1985, is directed to state action, and the invasion of an individual's rights by another individual or individuals is not within its purview."

The complaint filed in this cause did not charge a massive conspiracy, and it was held in *Bryant v. Donnell*, 239 Fed. Supp. 681 as follows:

> "Complaint which alleged that defendants' conspired to deprive plaintiffs of rights protected by civil rights statutes, and private citizens arrested plaintiffs but did not allege massive conspiracy where hinderance of law inforcement officers or enlistments of officers conspiracies did not show denial of law protection or equal immunities or privileges and hence did not state claim under civil rights conspiracies, Title 42 U.S.C. 1985(3)"

In the *controlling case* of *COLLINS V. HARDYMAN*, 341 U.S. 651, the Court dealt with the issue presented in this case at length and has settled the issue and this case has become a landmark case on the question involved in this case, The Court, in ruling upon this question, had the following to say with reference to the issue involved herein:

> "What we have here is not a conspiracy to affect in any way these plaintiffs' equality of protection by the law, or their equality of privileges and immunities under the law. There is not the slightest allegation that defendants were conscious of or trying to influence the law, or were endeavoring to obstruct or interfere with it. The only inequality suggested is that the defendants broke up plaintiffs' meeting and did not break up meetings of others with whose

> sentiments they agreed. To be sure, this is not equal injury, but it is no more a deprivation of 'equal protection' or of 'equal privileges and immunities' than it would be for one to assault one neighbor without assaulting them all, or to libel some persons without mention of others. Such private discrimination is not inequality before the law unless there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so. Plaintiffs' rights were certainly invaded, disregarded and lawlessly violated, but neither their rights nor their equality of rights under the law have been, or were intended to be, denied or impaired."

It is contended by the Appellants that *Collins v. Hardyman*, Supra, is not applicable to the issue involved herein for the reason that all of the parties in said cause were of the white race. However, in the case of *Bryant v. Donnell*, Supra, the parties were both white and negro, and the court adopted the rule set out in *Collins v. Hardyman* as the same rule in the case of *Bryant v. Donnell*, Supra.

The Appellants refer at length to the case of *U.S. v. Guest*, 383 U.S. 745 as their authority in this cause of action. However, this case was based on criminal statutes, nor civil, and the Court was careful to point out that the issues therein were a statutory construction, not a constitutional power. Also, the indictment in this cause charges an offense under "color of law." It will also be noted that a question was presented involving the rights of persons to engage in interstate commerce.

In the case of *Koch v. Zuieback*, 316 Fed. 2d., 1, the Court held as follows:

> "At lease some of the conspirators must be acting under color of state law before action can be maintained against them under Civil Rights Act, 42 U.S. C.A., Section 1985(3)." This case further held: "allegations that acts complained of were committed by defendants neither as Federal officials under color of Federal law or as individuals acting beyond scope of their official authority were not sufficient

to serve as basis for cause of action under Civil Rights Act, 42 U.S.C.A. Section 1985(3)." The court held in this case that same should be dismissed for lack of jurisdiction.

CONCLUSION

For the foregoing reasons, Respondents (Appellees) respectfully submit that the Court below did not err in dismissing the complaint for failure to state a claim for relief under 42 U.S.C. 1985(3).

Respectfully submitted,

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NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

GRIFFIN ET AL. *v.* BRECKENRIDGE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 144. Argued January 13–14, 1971—Decided June 7, 1971

Petitioners, Negro citizens of Mississippi, filed a damages action under 42 U. S. C. § 1985 (3), charging that respondents, white citizens of Mississippi, conspired to assault petitioners, who were passengers "travelling upon the federal, state, and local highways" in an automobile driven by one Grady, a citizen of Tennessee, for the purpose of preventing them "and other Negro-Americans, through . . . force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi," including rights to free speech, assembly, association, and movement, and the right not to be enslaved. The complaint alleged that pursuant to the conspiracy respondents, mistakenly believing Grady to be a civil rights worker, blocked the travellers' passage on the public highways, forced them from the car, held them at bay with firearms, and amidst threats of murder clubbed them, inflicting serious physical injury. Sec. 1985 (3) provides: "If two or more persons . . . conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving . . . any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws [and] in any case of conspiracy set forth in this section, if one or more persons engaged therein do . . . any act in furtherance of the object of such conspiracy, whereby another is injured . . . or deprived of . . . any right or privilege of a citizen of the United States, the party so injured or deprived" may have a cause of action for damages against the conspirators. The District Court dismissed the complaint for failure to state a cause of action, relying on *Collins* v. *Hardyman*, 341 U. S. 651, where the Court in order to avoid difficult constitutional questions,

Syllabus

in effect construed § 1985 (3) to reach only conspiracies under color of state law. The Court of Appeals affirmed. *Held:*

1. Sec. 1985 (3) does not require state action but reaches private conspiracies, such as the one alleged in the complaint here, that are aimed at invidiously discriminatory deprivation of the equal enjoyment of rights secured to all by law, as is clearly manifested by the wording and legislative history of the statute and companion statutory provisions, and the constitutional impediments that influenced the Court's construction of the statute in *Collins, supra*, as is clear from more recent decisions, simply do not exist. Pp. 7–15.

2. Congress had the constitutional authority to reach a private conspiracy of the sort alleged in the complaint in this case both under § 2 of the Thirteenth Amendment and under its power to protect the right of interstate travel. Pp. 15–18.

410 F. 2d 817, reversed and remanded.

STEWART, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACK, DOUGLAS, HARLAN (except for Part V B), BRENNAN, WHITE, MARSHALL, and BLACKMUN, JJ., joined. HARLAN, J., filed a concurring statement.

SUPREME COURT OF THE UNITED STATES

No. 144.—October Term, 1970

Eugene Griffin et al., Petitioners, *v.* Lavon Breckenridge et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 7, 1971]

Mr. Justice Stewart delivered the opinion of the Court.

This litigation began when the petitioners filed a complaint in the United States District Court for the Southern District of Mississippi, seeking compensatory and punitive damages and alleging, in substantial part, as follows:

> "2. The plaintiffs are Negro citizens of the United States and residents of Kemper County, Mississippi. . . .
>
> "3. The defendants, Lavon Breckenridge and James Calvin Breckenridge, are white adult citizens of the United States residing in DeKalb, Kemper County, Mississippi.
>
> "4. On July 2, 1966, the . . . plaintiffs . . . were passengers in an automobile belonging to and operated by R. G. Grady of Memphis, Tennessee. They were travelling upon the federal, state and local highways in and about DeKalb, Mississippi, performing various errands and visiting friends.
>
> "5. On July 2, 1966 defendants, acting under a mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes, wilfully and maliciously conspired, planned, and agreed to block the passage of said plaintiffs in said automobile upon the public

highways, to stop and detain them and to assault, beat and injure them with deadly weapons. Their purpose was to prevent said plaintiffs and other Negro-Americans, through such force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi, including but not limited to their rights to freedom of speech, movement, association and assembly; their right to petition their government for redress of their grievances; their rights to be secure in their persons and their homes; and their rights not to be enslaved nor deprived of life and liberty other than by due process of law.

"6. Pursuant to their conspiracy, defendants drove their truck into the path of Grady's automobile and blocked its passage over the public road. Both defendants then forced Grady and said plaintiffs to get out of Grady's automobile and prevented said plaintiffs from escaping while defendant James Calvin Breckenridge clubbed Grady with a blackjack, pipe or other kind of club by pointing firearms at said plaintiffs and uttering threats to kill and injure them if defendants' orders were not obeyed, thereby terrorizing them to the utmost degree and depriving them of their liberty.

"7. Pursuant to their conspiracy, defendants wilfully, intentionally, and maliciously menaced and assaulted each of the said plaintiffs by pointing firearms and wielding deadly blackjacks, pipes or other kind of clubs, while uttering threats to kill and injure said plaintiffs, causing them to become stricken with fear of immediate injury and death and to suffer extreme terror, mental anguish and emotional and physical distress.

"8. Pursuant to defendants' conspiracy, defendant James Calvin Breckenridge then wilfully, intentionally and maliciously clubbed each of said plaintiffs on and about the head, severely injuring all of them, while both defendants continued to assault said plaintiffs and prevent their escape by pointing their firearms at them.

. . . . . .

"12. By their conspiracy and acts pursuant thereto, the defendants have wilfully and maliciously, directly and indirectly, intimidated and prevented the . . . plaintiffs . . . and other Negro-Americans from enjoying and exercising their rights, privileges and immunities as citizens of the United States and the State of Mississippi, including but not limited to, their rights to freedom of speech, movement, association and assembly; the right to petition their government for redress of grievances; their right to be secure in their person; their right not to be enslaved nor deprived of life, liberty or property other than by due process of law, and their rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi . . . ."

The jurisdiction of the federal court was invoked under the language of 42 U. S. C. § 1985 (3) that provides:

"If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws . . . . [I]n any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of

such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

The District Court dismissed the complaint for failure to state a cause of action, relying on the authority of this Court's opinion in *Collins* v. *Hardyman*, 341 U. S. 651, which in effect construed the above language of § 1985 (3) as reaching only conspiracies under color of state law. The Court of Appeals for the Fifth Circuit affirmed the judgment of dismissal. 410 F. 2d 817. Judge Goldberg's thorough opinion for that court expressed "serious doubts" as to the "continued vitality" of *Collins* v. *Hardyman*, *id.*, at 823, and stated that "it would not surprise us if Collins v. Hardyman were disapproved and if § 1985 (3) were held to embrace private conspiracies to interfere with rights of national citizenship," *id.*, at 825–826 (footnote omitted), but concluded that "[s]ince we may not adopt what the Supreme Court has expressly rejected, we obediently abide the mandate in *Collins*," *id.*, at 826–827. We granted certiorari, 397 U. S. 1074, to consider questions going to the scope and constitutionality of 42 U. S. C. § 1985 (3).

I

Collins v. *Hardyman* was decided 20 years ago. The complaint in that case alleged that the plaintiffs were members of a political club that had scheduled a meeting to adopt a resolution opposing the Marshall Plan, and to send copies of the resolution to appropriate federal officials; that the defendants conspired to deprive the plaintiffs of their rights as citizens of the United States peaceably to assemble and to equal privileges and im-

munities under the laws of the United States; that, in furtherance of the conspiracy, the defendants proceeded to the meeting site and, by threats and violence, broke up the meeting, thus interfering with the right of the plaintiffs to petition the Government for the redress of grievances; and that the defendants did not interfere or conspire to interefere with the meetings of other political groups with whose opinions the defendants agreed. The Court held that this complaint did not state a cause of action under § 1985 (3):[1]

> "The complaint makes no claim that the conspiracy or the overt acts involved any action by state officials, or that defendants even pretended to act under color of state law. It is not shown that defendants had or claimed any protection or immunity from the law of the State, or that they in fact enjoyed such because of any act or omission by state authorities." 341 U. S., at 655.
>
> . . . . .
>
> "What we have here is not a conspiracy to affect in any way these plaintiffs' equality of protection by the law, or their equality of privileges and immunities under the law. There is not the slightest allegation that defendants were conscious of or trying to influence the law, or were endeavoring to obstruct or interfere with it. . . . Such private discrimination is not inequality before the law unless there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so." *Id.*, at 661.

The Court was careful to make clear that it was deciding no constitutional question, but simply construing the language of the statute, or more precisely, determining

[1] The statute was then 8 U. S. C. § 47 (3).

the applicability of the statute to the facts alleged in the complaint: [2]

> "We say nothing of the power of Congress to authorize such civil actions as respondents have commenced or otherwise to redress such grievances as they assert. We think that Congress has not, in the narrow class of conspiracies defined by this statute, included the conspiracy charged here. We therefore reach no constitutional questions." *Id.*, at 662.

Nonetheless, the Court made equally clear that the construction it gave to the statute was influenced by the constitutional problems that it thought would have otherwise been engendered:

> "It is apparent that, if this complaint meets the requirements of this Act, it raises constitutional problems of the first magnitude that, in the light of history, are not without difficulty. These would include issues as to congressional power under and apart from the Fourteenth Amendment, the reserved power of the States, the content of rights derived from national as distinguished from state citizenship, and the question of separability of the Act in its application to those two classes of rights." *Id.*, at 659.

Mr. Justice Burton filed a dissenting opinion, joined by MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS. The dissenters thought that "[t]he language of the statute refutes the suggestion that action under color of state

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[2] "We do not say that no conspiracy by private individuals could be of such magnitude and effect as to work a deprivation of equal protection of the laws, or of equal privileges and immunities under laws. . . . But here nothing of that sort appears. We have a case of a lawless political brawl, precipitated by a handful of white citizens against other white citizens." 341 U. S., at 662.

law is a necessary ingredient of the cause of action which it recognizes." *Id.*, at 663. Further, the dissenters found no constitutional difficulty in according to the statutory words their apparent meaning:

> "Congress certainly has the power to create a federal cause of action in favor of persons injured by private individuals through the abridgment of federally created constitutional rights. It seems to me that Congress has done just this in [§ 1985 (3)]. This is not inconsistent with the principle underlying the Fourteenth Amendment. That amendment prohibits the respective states from making laws abridging the privileges or immunities of citizens of the United States or denying to any person within the jurisdiction of a state the equal protection of the laws. Cases holding that those clauses are directed only at state action are not authority for the contention that Congress may not pass laws supporting rights which exist apart from the Fourteenth Amendment." *Id.*, at 664.

II

Whether or not *Collins* v. *Hardyman* was correctly decided on its own facts is a question with which we need not here be concerned. But it is clear, in the light of the evolution of decisional law in the years that have passed since that case was decided, that many of the constitutional problems there perceived simply do not exist. Little reason remains, therefore, not to accord to the words of the statute their apparent meaning. That meaning is confirmed by judicial construction of related laws, by the structural setting of § 1985 (3) itself, and by its legislative history. And a fair reading of the allegations of the complaint in this case clearly brings them within this meaning of the statutory language. As so construed, and as applied to this complaint, we

have no doubt that the statute was within the constitutional power of Congress to enact.

III

We turn, then, to an examination of the meaning of § 1985 (3). On their face, the words of the statute fully encompass the conduct of private persons. The provision speaks simply of "two or more persons in any State or Territory" who "conspire or go in disguise on the highway or on the premises of another." Going in disguise, in particular, is in this context an activity so little associated with official action and so commonly connected with private marauders that this clause could almost never be applicable under the artificially restrictive construction of *Collins*. And since the "going in disguise" aspect must include private action, it is hard to see how the conspiracy aspect, joined by a disjunctive, could be read to require the involvement of state officers.

The provision continues, specifying the motivation required: ". . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." This language is, of course, similar to that of § 1 of the Fourteenth Amendment, which in terms speaks only to the States,[3] and judicial thinking about what can constitute an equal protection deprivation has, because of the Amendment's wording, focused almost entirely upon identifying the requisite "state action" and defining the offending forms of state law and official conduct. A century of Four-

[3] ". . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

teenth Amendment adjudication has, in other words, made it understandably difficult to conceive of what might constitute a deprivation of the equal protection of the laws by private persons. Yet there is nothing inherent in the phrase that requires the action working the deprivation to come from the State. See, *e. g.*, *United States* v. *Harris*, 106 U. S. 629, 643. Indeed, the failure to mention any such requisite can be viewed as an important indication of congressional intent to speak in § 1985 (3) of *all* deprivations of "equal protection of the laws" and "equal privileges and immunities under the laws," whatever their source.

The approach of this Court to other Reconstruction civil rights statutes in the years since *Collins* has been to "accord [them] a sweep as broad as [their] language." *United States* v. *Price*, 383 U. S. 787, 801; *Jones* v. *Alfred H. Mayer Co.*, 392 U. S. 409, 437. Moreover, very similar language in closely related statutes has early and late received an interpretation quite inconsistent with that given to § 1985 (3) in *Collins*. In construing the exact criminal counterpart of § 1985 (3), the Court in *United States* v. *Harris*, 106 U. S. 629, observed that the statute was "not limited to take effect only in case [of state action]," *id.*, at 639, but "was framed to protect from invasion by private persons, the equal privileges and immunities under the laws, of all persons and classes of persons," *id.*, at 637. In *United States* v. *Williams*, 341 U. S. 70, the Court considered the closest remaining criminal analogue to § 1985 (3), 18 U. S. C. § 241.[4] Mr. Justice Frankfurter's plurality opinion, without

[4] "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway, or on the

contravention from the concurrence or dissent, concluded that "if language is to carry any meaning at all it must be clear that the principal purpose of [§ 241], unlike [18 U. S. C. § 242], was to reach private action rather than officers of a State acting under its authority. Men who 'go in disguise upon the public highway, or upon the premises of another' are not likely to be acting in official capacities." 341 U. S., at 76. "Nothing in [the] terms [of § 241] indicates that color of State law was to be relevant to prosecution under it." *Id.*, at 78 (footnote omitted).

A like construction of § 1985 (3) is reinforced when examination is broadened to take in its companion statutory provisions. There appear to be three possible forms for a state action limitation on § 1985 (3)—that there must be action under color of state law, that there must be interference with or influence upon state authorities, or that there must be a private conspiracy so massive and effective that it supplants those authorities and thus satisfies the state action requirement.[5] The Congress which passed the Civil Rights Act of 1871, § 2 of which is the parent of § 1985 (3), dealt with each of these three situations in explicit terms in other parts of the same Act. An element of the cause of action established by the first section, now 42 U. S. C. § 1983, is that the deprivation complained of must have been inflicted under color of state law.[6] To read any such requirement into

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premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

"They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

The penalty section was amended in 1968. See 18 U. S. C. § 241 (Supp. V, 1970).

[5] This last was suggested in *Collins* v. *Hardyman*. See n. 2, *supra*.

[6] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person

§ 1985 (3) would thus deprive that section of all independent effect. As for interference with state officials, § 1985 (3) itself contains another clause dealing explicitly with that situation.[7] And § 3 of the 1871 Act provided for military action at the command of the President should massive private lawlessness render state authorities powerless to protect the federal rights of classes of citizens, such a situation being defined by the Act as constituting a state denial of equal protection. 17 Stat. 14. Given the existence of these three provisions, it is almost impossible to believe that Congress intended, in the dissimilar language of the portion of § 1985 (3) now before us, simply to duplicate the coverage of one or more of them.

The final area of inquiry into the meaning of § 1985 (3) lies in its legislative history. As originally introduced in the 42d Congress, the section was solely a criminal provision outlawing certain conspiratorial acts done with intent "to do any act in violation of the rights, privileges, or immunities of another person . . . ." Cong. Globe, 42d Cong., 1st Sess. App. 68 (1871). Introducing the bill, the House sponsor, Representative Shellabarger, stressed that "the United States always has assumed to enforce, as against the States, *and also persons*, every one of the provisions of the Constitution." *Id.*, at App. 69 (emphasis supplied). The enormous sweep of the original language led to pressures for amendment, in the

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within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[7] "If two or more persons in any State or Territory conspire or go in disguise on the highway on on the premises of another . . . for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . ."

course of which the present civil remedy was added. The explanations of the added language centered entirely on the animus or motivation that would be required, and there was no suggestion whatever that liability would not be imposed for purely private conspiracies. Representative Willard, draftsman of the limiting amendment, said that his version "provid[ed] that the essence of the crime should consist in the intent to deprive a person of the equal protection of the laws and of equal privileges and immunities under the laws; in other words, that the Constitution secured, and was only intended to secure, equality of rights and immunities, and that we could only punish by United States laws a denial of that equality." *Id.*, at App. 188. Representative Shellabarger's explanation of the amendment was very similar: "The object of the amendment is . . . to confine the authority of this law to the prevention of deprivations which shall attack the equality of rights of American citizens; that any violation of the right, the *animus* and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies of this section." *Id.*, at 478.[8]

Other supporters of the bill were even more explicit in their insistence upon coverage of private action. Shortly before the amendment was introduced, Representative Shanks urged, "I do not want to see [this measure] so amended that there shall be taken out of it the frank assertion of the power of the national Government to protect life, liberty, and property, irrespective of the act of the State." *Id.*, at App. 141. At about the same time, Representative Coburn asked: "Shall we deal

[8] The conspiracy and disguise language of what finally became § 1985 (3) appears to have been borrowed from the parent of 18 U. S. C. § 241. See Cong. Globe, 41st Cong., 2d Sess. 3611–3613 (1870).

with individuals, or with the State as a State? If we can deal with individuals, that is a less radical course, and works less interference with local governments. . . . It would seem more accordant with reason that the easier, more direct, and more certain method of dealing with individual criminals was preferable, and that the more thorough method of superseding State authority should only be resorted to when the deprivation of rights and the condition of outlawry was so general as to prevail in all quarters in defiance of or by permission of the local government." *Id.*, at 459. After the amendment had been proposed in the House, Senator Pool insisted in support of the bill during Senate debate that "Congress must deal with individuals, not States. It must punish the offender against the rights of the citizen . . . ." *Id.*, at 608.

It is thus evident that all indicators—text, companion provisions, and legislative history—point unwaveringly to § 1985 (3)'s coverage of private conspiracies. That the statute was meant to reach private action does not, however, mean that it was intended to apply to all tortious, conspiratorial interferences with the rights of others. For, though the supporters of the legislation insisted on coverage of private conspiracies, they were equally emphatic that they did not believe, in the words of Representative Cook, "that Congress has a right to punish an assault and battery when committed by two or more persons within a State." *Id.*, at 485. The constitutional shoals that would lie in the path of interpreting § 1985 (3) as a general federal tort law can be avoided by giving full effect to the congressional purpose—by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment. See the remarks of Representatives Willard and Shellabarger, quoted at p. 12, *supra*. The language requiring intent to deprive of

equal protection, or *equal* privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action.[9] The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.[10]

IV

We return to the petitioners' complaint to determine whether it states a cause of action under § 1985 (3) as so construed. To come within the legislation a complaint must allege that the defendants did (1) "conspire or go in disguise on the highway or on the premises of another" (2) "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." It must then assert that one or more of the conspirators (3) did, or caused to be done, "any act in furtherance of the object of [the] conspiracy," whereby another was (4a) "injured in his person or property" or (4b) "deprived of having and exercising any right or privilege of a citizen of the United States."

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[9] We need not decide, given the facts of this case, whether a conspiracy motivated by invidiously discriminatory intent other than racial bias would be actionable under the portion of § 1985 (3) before us. Cf. Cong. Globe, 42d Cong., 1st Sess. 567 (1871) (remarks of Senator Edmunds).

[10] The motivation requirement introduced by the word "equal" into the portion of § 1985 (3) before us must not be confused with the test of "specific intent to deprive a person of a federal right made definite by decision or other rule of law" articulated by the plurality opinion in *Screws* v. *United States*, 325 U. S. 91, 103, for prosecutions under 18 U. S. C. § 242. Section 1985 (3), unlike § 242, contains no specific requirement of "wilfulness." Cf. *Monroe* v. *Pape*, 365 U. S. 167, 187. The motivation aspect of § 1985 (3) focuses not on scienter in relation to deprivation of rights but on invidiously discriminatory animus.

The complaint fully alleges, with particulars, that the respondents conspired to carry out the assault. It further asserts that "[t]heir purpose was to prevent [the] plaintiffs and other Negro-Americans, through . . . force, violence, and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi," including a long list of enumerated rights such as free speech, assembly, association, and movement. The complaint further alleges that the respondents were "acting under a mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes." These allegations clearly support the requisite animus to deprive the petitioners of the equal enjoyment of legal rights because of their race. The claims of detention, threats, and battery amply satisfy the requirement of acts done in furtherance of the conspiracy. Finally, the petitioners—whether or not the nonparty Grady was the main or only target of the conspiracy—allege personal injury resulting from those acts. The complaint, then, states a cause of action under § 1985 (3). Indeed, the conduct here alleged lies so close to the core of the coverage intended by Congress that it is hard to conceive of wholly private conduct that would come within the statute if this does not. We must, accordingly, consider whether Congress had constitutional power to enact a statute that imposes liability under federal law for the conduct alleged in this complaint.

V

The constitutionality of § 1985 (3) might once have appeared to have been settled adversely by *United States* v. *Harris*, 106 U. S. 629, and *Baldwin* v. *Franks*, 120 U. S. 678, which held unconstitutional its criminal counterpart, then § 5519 of the Revised Statutes.[11] The Court

[11] R. S. § 5519 was repealed in 1909. 35 Stat. 1154.

in those cases, however, followed a severability rule that required invalidation of an entire statute if any part of it was unconstitutionally overbroad, unless its different parts could be read as wholly independent provisions. *E. g., Baldwin* v. *Franks, supra,* at 685. This Court has long since firmly rejected that rule in such cases as *United States* v. *Raines,* 362 U. S. 17, 20–24. Consequently we need not find the language of § 1985 (3) now before us constitutional in all its possible applications in order to uphold its facial constitutionality and its application to the complaint in this case.

That § 1985 (3) reaches private conspiracies to deprive others of legal rights can, of itself, cause no doubts of its constitutionality. It has long been settled that 18 U. S. C. § 241, a criminal statute of far broader phrasing (see n. 4, *supra*), reaches wholly private conspiracies and is constitutional. *E. g., In re Quarles,* 158 U. S. 532; *Logan* v. *United States,* 144 U. S. 263, 293–295; *United States* v. *Waddell,* 112 U. S. 76, 77–81; *Ex parte Yarbrough,* 110 U. S. 651. See generally *Twining* v. *New Jersey,* 211 U. S. 78, 97–98. Our inquiry, therefore, need go only to identifying a source of congressional power to reach the private conspiracy alleged by the complaint in this case.

A

Even as it struck down R. S. § 5519 in *United States* v. *Harris,* the Court indicated that parts of its coverage would, if severable, be constitutional under the Thirteenth Amendment. 106 U. S., at 640–641. And surely there has never been any doubt of the power of Congress to impose liability on private persons under § 2 of that amendment, "for the amendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States." *Civil Rights Cases,* 109 U. S. 3, 20. See

also *id.*, at 23; *Clyatt* v. *United States*, 197 U. S. 207, 216, 218; *Jones* v. *Alfred H. Mayer Co.*, 392 U. S. 409, 437–440. Not only may Congress impose such liability, but the varieties of private conduct which it may make criminally punishable or civilly remediable extend far beyond the actual imposition of slavery or involuntary servitude. By the Thirteenth Amendment, we committed ourselves as a Nation to the proposition that the former slaves and their descendants should be forever free. To keep that promise, "Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation." *Jones* v. *Alfred H. Mayer Co.*, *supra*, at 440. We can only conclude that Congress was wholly within its powers under § 2 of the Thirteenth Amendment in creating a statutory cause of action for Negro citizens who have been the victims of conspiratorial, racially discriminatory private action aimed at depriving them of the basic rights that the law secures to all free men.

B

Our cases have firmly established that the right of interstate travel is constitutionally protected, does not necessarily rest on the Fourteenth Amendment, and is assertable against private as well as governmental interference. *Shapiro* v. *Thompson*, 394 U. S. 618, 629–631; *id.*, at 642–644 (concurring opinion); *United States* v. *Guest*, 383 U. S. 745, 757–760 and n. 17; *Twining* v. *New Jersey*, 211 U. S. 78, 97; *Slaughter-House Cases*, 83 U. S. (16 Wall.) 36, 79–80; *Crandall* v. *Nevada*, 73 U. S. (6 Wall.) 35, 44, 48–49; *Passenger Cases*, 48 U. S. (7 How.) 283, 492 (Taney, C. J., dissenting). The "right to pass freely from State to State" has been explicitly recognized as "among the rights and privileges of National citizenship." *Twining* v. *New Jersey*, *supra*, at 97. That

right, like other rights of national citizenship, is within the power of Congress to protect by appropriate legislation. *E. g., United States* v. *Guest, supra,* at 759; *United States* v. *Classic,* 313 U. S. 299, 314–315; *Ex parte Yarbrough,* 110 U. S. 651; *Oregon* v. *Mitchell,* 400 U. S. 112, 285–287 (concurring and dissenting opinion).

The complaint in this case alleged that the petitioners "were travelling upon the federal, state and local highways in and about" DeKalb, Kemper County, Mississippi. Kemper County is on the Mississippi-Alabama border. One of the results of the conspiracy, according to the complaint, was to prevent the petitioners and other Negroes from exercising their "rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi." Finally, the conspiracy was alleged to have been inspired by the respondents' erroneous belief that Grady, a Tennessean, was a worker for Negro civil rights. Under these allegations it is open to the petitioners to prove at trial that they had been engaging in interstate travel or intended to do so, that their federal right to travel interstate was one of the rights meant to be discriminatorily impaired by the conspiracy, that the conspirators intended to drive out-of-state civil rights workers from the State, or that they meant to deter the petitioners from associating with such persons. This and other evidence could make it clear that the petitioners had suffered from conduct which Congress may reach under its power to protect the right of interstate travel.

C

In identifying these two constitutional sources of congressional power, we do not imply the absence of any other. More specifically, the allegations of the complaint in this case have not required consideration of the scope of the power of Congress under § 5 of the Four-

teenth Amendment.[12] By the same token, since the allegations of the complaint bring this cause of action so close to the constitutionally authorized core of the statute, there has been no occasion here to trace out its constitutionally permissible periphery.

The judgment is reversed, and the case is remanded to the United States District Court for the Southern District of Mississippi for further proceedings consistent with this opinion.

It is so ordered.

[12] See *Katzenbach* v. *Morgan*, 384 U. S. 641; *Oregon* v. *Mitchell*, 400 U. S. 112, 135 (opinion of DOUGLAS, J.), 229 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.); *United States* v. *Guest*, 383 U. S. 745, 761 (concurring opinion of Clark, J.), 774 (separate opinion of BRENNAN, J.).

SUPREME COURT OF THE UNITED STATES

No. 144.—October Term, 1970

Eugene Griffin, Etc. et al., Petitioners, *v.* Lavon Breckenridge et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June 7, 1971]

Mr. Justice Harlan, concurring.

I agree with the Court's opinion, except that I find it unnecessary to rely on the "right of interstate travel" as a premise for justifying federal jurisdiction under § 1985 (3). With that reservation, I join the opinion and judgment of the Court.